

**Legal Services**

# **Claims**

**Headquarters  
Department of the Army  
Washington, DC  
31 December 1997**

**UNCLASSIFIED**

# ***SUMMARY of CHANGE***

AR 27-20

Claims

This revision--

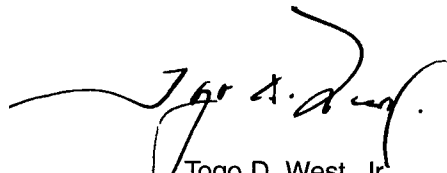
- o Deletes procedures for filing, investigating, processing, settling, and paying claims (chap 2). (These procedures are published in DA Pam 27-162.)
- o Clarifies division of investigative responsibilities between unit claims officers and U.S. Army Judge Advocate General claims offices (paras 2-1 through 2-4).
- o Defines "proper claims" and "claimants"; adds new rules on accepting claims (paras 2-6 through 2-11).
- o Clarifies procedures for opening and arranging claims files; addresses the requirement for, and procedures used on, mirror files (paras 2-12 through 2-15).
- o Details the factors necessary to determine which statute applies to a particular type of claim (paras 2-8 through 2-32).
- o Lists all exclusions to tort liability under the Federal Tort Claims Act, Military Claims Act, Non-Scope Claims Act, National Guard Claims Act, Army Maritime Claims Settlement Act, and Foreign Claims Act in one section (chap 2, section V).
- o Extends prohibitions of payment of collateral source damages and subrogation claims on all claims except those arising under the Federal Tort Claims Act and the Army Maritime Claims Settlement Act (paras 2-42 and 2-43).
- o Extends rule requiring structured settlements in certain types of claims to claims arising under all statutes except Federal Tort Claims Act and Army Maritime Claims Settlement Act (para 2-46).
- o Adds new rules and guidance for evaluating tort claims (chap 2, section VII).
- o Discusses negotiation methods (chap 2, section VIII).
- o Updates and adds methods for approving and denying claims; addresses types of settlement agreements used (chap 2, section IX).
- o Lists in one paragraph the sources of funds for paying all types of tort claims (para 2-63).
- o Clarifies the circumstances under which tort claims generated by the acts or omissions of Army Reserve and National Guard personnel fall within the scope of the Federal Tort Claims Act and the National Guard Claims Act (para 6-2).

- o Provides that USARCS will be the action office for all foreign tort claims valued at more than \$50,000, and for potentially compensable events which may give rise to multiple claims valued at more than \$100,000 in total (subpara 10-6*f*(5)).
- o Expands existing authority to pay personnel claims for vehicle theft and vandalism to permit compensation for loss or damage arising from such incidents occurring anywhere on post or at quarters (subpara 11-5*h*).
- o Authorizes staff judge advocates to waive the maximum allowable amounts that apply to personnel claims (subpara 11-14*b*).
- o Authorizes staff judge advocates to act on certain requests for reconsideration of personnel claims (para 11-20).
- o Outlines the provisions for apportioning claims payments between appropriated funds and nonappropriated funds (paras 12-6 and 12-10).
- o Revises the affirmative claims practice and implements recent changes to the Federal Medical Care Recovery Act by issuing guidance on asserting demands and collecting the "cost of pay" within the medical care recovery context (chap 14).
- o Revises affirmative claims delegations of authority (para 14-4).
- o Revises the affirmative claims deposit procedures (para 14-19).

Effective 1 April 1998

Legal Services

Claims



Togo D. West, Jr.  
Secretary of the Army

**History.** This revision has been reorganized to complement the revised DA Pam 27-162. Because this publication has been extensively revised, the changed portions have not been highlighted.

**Summary.** This regulation sets forth guiding policies and legal principles for investigating, processing, and settling claims against, and in favor of, the United States. This publication is intended to be used as

guiding policy for the procedures in DA Pam 27-162.

**Applicability.** This regulation applies to the Active Army, the Army National Guard of the United States, the United States Army Reserve and, under certain circumstances, Department of Defense civilian employees. In countries where the United States Army has been assigned single service claims responsibility, this regulation applies to claims generated by the other armed services. During mobilization, chapters and policies contained in this regulation may be modified by the proponent.

**Proponent and exception authority.** The proponent of this regulation is The Judge Advocate General (TJAG). TJAG has the authority to approve exceptions to this regulation that are consistent with controlling law and regulations. The proponent may delegate this approval authority, in writing, to a division chief within the proponent agency in the grade of colonel or the civilian equivalent.

**Army management control process.** This regulation contains management control provisions in accordance with AR 11-2 and

contains a checklist for conducting management control reviews.

**Supplementation.** Supplementation of this regulation and establishment of command and local forms are prohibited without prior approval from the Commander, United States Army Claims Service, 4411 Llewellyn Avenue, Fort George G. Meade, MD 20755-5360.

**Suggested Improvements.** Users of this regulation are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to the Commander, United States Army Claims Service, Fort George G. Meade, MD 20755-5360.

**Distribution.** Distribution of this publication is made in accordance with the initial distribution number (IDN) 092434, intended for command levels B, C, D, and E for Active Army, the Army National Guard of the United States, and the United States Army Reserve.

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## **Glossary**

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# Chapter 1

## The Army Claims System

### Section I

#### General

#### 1-1. Purpose

This regulation sets forth policies and procedures that govern the investigating, processing, and settling of claims against, and in favor of, the United States under the authority conferred by statutes, regulations, international and interagency agreements, and DOD Directives (DODD). It is intended to ensure that claims are investigated properly and adjudicated according to applicable law, and valid recoveries and affirmative claims are pursued against carriers, third party insurers, and tortfeasors.

#### 1-2. References

Required and related publications, and prescribed and referenced forms, are listed in Appendix A.

#### 1-3. Explanation of abbreviations and terms

Abbreviations and special terms used in this regulation are explained in the Glossary.

#### 1-4. Types of claims

*a.* This regulation covers claims under the following claims settlement authorities:

(1) The Military Claims Act (MCA), 10 United States Code (USC) 2733, 2738 (see chap 3 of this publication).

(2) The Federal Tort Claims Act (FTCA), 28 USC 2671-2680 (see chap 4).

(3) The Non-Scope Claims Act, 10 USC 2737 (see chap 5).

(4) The National Guard Claims Act (NGCA), 32 USC 715 (see chap 6).

(5) Treaties and other international agreements, 10 USC 2734b (see chap 7).

(6) The Maritime Claims Settlement Act (MCSA), 10 USC 4801-4804, 4806 (see chap 8).

(7) Redress of injuries to personal property, Uniform Code of Military Justice (UCMJ), Article 139, 10 USC 939 (see chap 9).

(8) The Foreign Claims Act (FCA), 10 USC 2734 (see chap 10).

(9) The Personnel Claims Act (PCA), 31 USC 3721 (see chap 11).

(10) Claims against nonappropriated fund (NAF) activities and the risk management program (RIMP) (see chap 12).

(11) The Federal Claims Collection Act (FCCA), 31 USC 3711 (see chap 14).

(12) The Federal Medical Care Recovery Act (FMCRA), 42 USC 2651-2653 (see chap 14).

(13) Collection from third party payers of reasonable costs of healthcare services, 10 USC 1095 (see chap 14).

(14) Claims by the U.S. Postal Service for losses or shortages in postal accounts caused by unbonded Army personnel (39 USC 411 and DOD Manual 4525.6-M). (See paras 1-8i and 2-25 of this publication).

*b.* Where a conflict exists between a general provision of this publication and a specific provision found in any of this publication's chapters implementing a specific statute, the statute's specific provision will control.

#### 1-5. Command and organizational relationships

*a. The Secretary of the Army.* The Secretary of the Army (SA) heads the Army Claims System and acts on certain claims appeals directly or through a designee.

*b. The Judge Advocate General.* The SA has delegated authority to The Judge Advocate General (TJAG) to assign areas of responsibility and designate functional responsibility for claims purposes. TJAG has delegated authority to the Commander, United States Army Claims Service (USARCS), to carry out the responsibilities assigned in paragraph 1-9 and as otherwise lawfully delegable.

*c. U.S. Army Claims Service.* USARCS, a command and component of the Office of TJAG, is the agency through which the SA and TJAG discharge their responsibilities for the administrative settlement of claims worldwide (see AR 10-72). USARCS' mailing address is Commander, U.S. Army Claims Service, Office of The Judge Advocate General, 4411 Llewellyn Avenue, Fort George G. Meade, Maryland 20755-5360. The telephone number is (301) 677-7009, ext. 203.

*d. Command claims services.*

(1) Command claims services exercise general supervisory authority over claims matters arising within their assigned areas of operation. Command claims services will—

(a) Effectively control and supervise the investigation of potentially compensable events (PCE) occurring within the command's geographic area of responsibility, in other areas for which the command is assigned claims responsibility, and during the course of the command's operations.

(b) Provide services for the processing and settlement of claims for and against the United States.

(2) The Commander, USARCS, may delegate authority to establish a command claims service to the commander of a major overseas command or other commands that include areas outside the United States, its territories and possessions.

(a) When a large deployment occurs, the Commander, USARCS, may designate a command claims service for a limited time or purpose, such as for the duration of an operation and for the time necessary to accomplish the mission. The appropriate major Army command (MACOM) will assist the Commander, USARCS, in obtaining resources and personnel for the mission.

(b) In coordination with the Commander, USARCS, field claims offices will designate areas of responsibility for each new command claims service.

(3) A command claims service may be a separate organization with a designated commander or chief. If it is part of the command's Office of the Staff Judge Advocate (SJA), the SJA will also be the chief of the command claims service.

*e. Area claims offices.* The following may be designated as area claims offices (ACO):

(1) An office under the supervision of the senior judge advocate (JA) of each command or organization so designated by the Commander, USARCS. The senior JA is the head of the ACO.

(2) An office under supervision of the senior JA of each command in the area of operations of a command claims service so designated by the chief of that service after coordination with the Commander, USARCS. The senior JA is the head of the ACO.

(3) The office of counsel of each U.S. Army Corps of Engineers (USACE) district within the United States and such other USACE commands or agencies as designated by the Commander, USARCS, with concurrence of the Chief Counsel, Office of the Chief of Engineers, for all claims generated within such districts, commands or agencies. The district counsel or the attorney in charge of the command's or agency's legal office is the head of the ACO.

*f. Claims processing offices.* Claims processing offices (CPO) are normally small legal offices or ACO subordinate elements, designated by the Commander, USARCS, a command claims service or an ACO. These offices are established for the investigation of all actual and potential claims arising within their jurisdiction, on either an area, command or agency basis. There are four types of claims processing offices (see para 1-16c):

(1) Claims processing offices without approval authority.

(2) Claims processing offices with approval authority.

(3) Medical claims processing offices.

(4) Special claims processing offices.

*g. Limitations on delegation of authority.*

(1) The commanders or chiefs of command claims services or the heads of ACOs or CPOs with approval authority may delegate, in writing, all or any portion of their monetary approval authority to subordinate JAs or claims attorneys in their services or offices.



(2) The authority to act upon appeals or requests for reconsideration, to disapprove claims (including disapprovals based on substantial fraud), to grant waivers of maximum amounts allowable, or to make final offers will not be delegated.

(3) CPOs will provide copies of all delegations affecting them to the ACO and, if so directed, to command claims services.

#### **1-6. Designation of claims attorneys**

*a. Who may designate.* The Commander, USARCS, the senior JA of a command having a command claims service, the chief of a command claims service, the head of an ACO, or the Chief Counsel of a USACE District, may designate a qualified attorney other than a JA as a claims attorney. The head of an ACO may designate a claims attorney to act as a CPO with approval authority.

*b. Eligibility.* To qualify as a claims attorney, an individual must be a civilian employee of the DA or DOD, a member of the bar of a State, the District of Columbia, or a jurisdiction where U.S. Federal law applies, serving in the grade of GS-11 or above, and performing primary duties as a legal adviser. The Commander, USARCS, may waive these requirements in appropriate cases.

### **Section II Responsibilities**

#### **1-7. The Judge Advocate General**

TJAG has worldwide Army Staff responsibility for administrative settlement of claims by and against the U.S. Government, generated by employees of the U.S. Army and DOD components other than the Departments of the Air Force and Navy (see DODD 5515.9). Certain claims responsibilities of TJAG are exercised by The Assistant Judge Advocate General as set forth in this regulation and directed by TJAG.

#### **1-8. Army claims mission**

Training missions and overseas deployments by the Active U.S. Army, Army Reserve, and National Guard personnel performing Federal functions may result in claims filed by individuals to recover funds for maneuver damage, certain environmental damage claims, destruction of personal or real property, and physical injury or death. Additionally, soldiers of the Army and other armed services, as well as eligible Department of Defense (DOD) civilian employees who have deployed or changed permanent duty station, submit thousands of claims annually for lost or damaged household goods and other losses sustained incident to service. In sum, the foregoing claims, once evaluated, result in tens of millions of dollars paid each year by the Army Claims System. The U.S. Army Claims Service (USARCS), Office of The Judge Advocate General, has been delegated authority to supervise a claims system on behalf of the Secretary of the Army and The Judge Advocate General. This system is comprised of U.S. Army Claims Service, Europe; U.S. Army Claims Service-Korea; U.S. Army Claims Service, South; and over 100 field claims offices around the world. USARCS provides policy guidance and substantive claims-related assistance to DA and the field claims offices worldwide. It provides operational guidance and support to military missions regarding claims, and expeditiously processes individual claims. USARCS also coordinates the execution of the single service claims responsibility that the DOD has assigned to the Army for designated parts of the world; it assists field claims attorneys and commanders in establishing a claims processing and payment protocol that facilitates military operations, deploys as required, and provides support for certain environmental claims. USARCS oversees claims payments arising from negligence and accidents that occur during military operations, such as peacekeeping and peace-enforcement missions; humanitarian relief operations in response to hurricanes, floods, earthquakes; and other natural disasters and civil disturbances. USARCS is the agent for certain claims if chemical accidents occur under the Chemical Stockpile Emergency Preparedness Program within the United States and at other chemical demilitarization sites. In contrast to the above payment missions, USARCS, through affirmative claims, is responsible

for recovering funds that are owed to the Army, DOD, and the General Treasury by transportation carriers, insurance companies and third parties who injure military personnel or damage military property. To execute its broad mission, USARCS receives indispensable assistance from the field claims offices and conducts an annual Worldwide Claims Training Course open to both the Army claims community as well as members of the DOD and Federal Government.

#### **1-9. The Commander, USARCS**

The Commander, USARCS, shall—

- a.* Supervise and inspect U.S. Army claims activities worldwide.
- b.* Formulate and implement claims policies and uniform standards for claims office operations.
- c.* Investigate, process and settle claims beyond field office monetary authority and consider appeals and requests for reconsideration on claims denied by the field offices.
- d.* Supervise the investigation, processing, and settlement of claims against, and in favor of, the United States under the statutes and regulations listed in paragraph 1-4, and pursuant to other appropriate statutes, regulations, and authorizations.
- e.* Designate ACOs, CPOs, and claims attorneys within DA and DOD components other than the Departments of the Navy and Air Force.
- f.* Designate continental United States (CONUS) geographic areas of claims responsibility.
- g.* Recommend action to be taken by the SA or the U.S. Attorney General, as appropriate, on claims in excess of \$200,000 or the threshold amount then current under the FTCA, on claims in excess of \$100,000 or the threshold amount then current under the FCA, the MCA, and the NGCA, and on other claims that have been appealed to the SA.
- h.* Operate the “receiving State office” for claims cognizable under Article VIII of the North Atlantic Treaty Organization (NATO) Status of Forces Agreement (SOFA), as implemented by 10 USC 2734b (chap 7).
- i.* Settle claims of the U.S. Postal Service for reimbursement under 39 USC 411 (see DOD Manual 4525.6-M).
- j.* Settle claims against carriers, warehouse firms, insurers, and other third parties for loss of, or damage to, personal property of DA or DOD soldiers or civilians incurred while the goods are in storage or in transit at Government expense (chap 11).
- k.* Formulate and recommend legislation for Congressional enactment of new statutes and the amendment of existing statutes considered essential for the orderly and expeditious administrative settlement of noncontractual claims.
- l.* Perform post-settlement review of claims.
- m.* Prepare, justify, and defend estimates of budgetary requirements and administer the Army claims budget.
- n.* Maintain permanent records of claims for which TJAG is responsible.
- o.* Assist in developing disaster and maneuver claims plans designed to implement the responsibilities set forth in paragraph 1-11k.
- p.* Develop and maintain plans for a disaster or civil disturbance in those geographic areas that are not under the jurisdiction of an area claims authority and in which the Army has single service responsibility or in which the Army is likely to be the predominant Armed Force.
- q.* Take initial action, as appropriate, on claims arising in emergency situations.
- r.* Provide assistance as available or take appropriate action to ensure that command claims services and ACOs are carrying out their responsibilities as set forth in paragraphs 1-10 and 1-11.
- s.* Serve as proponent for the Claims Legal Automated Information Management System (CLAIMS) and provide standard automated claims data management programs for worldwide use.
- t.* Ensure proper training of claims personnel.
- u.* Coordinate claims activities with the Air Force, Navy, Marine Corps, and other DOD agencies to ensure a consistent and efficient joint service claims program.

v. Investigate, process and settle, and supervise the field office investigation and processing of, medical malpractice claims arising in Army medical centers within the United States; provide medical claims judge advocates (MCJA), medical claims attorneys, and medical claims investigators assigned to such medical centers with technical guidance and direction on such claims.

w. Coordinate support with the U.S. Army Medical Command (MEDCOM) on matters relating to medical malpractice claims.

x. Issue an accounting classification to all properly designated claims settlement and approval authorities.

y. Perform the investigation, processing, and settlement of claims arising in areas outside command claims service areas of operation, unless specifically delegated to a command SJA or designee.

z. Maintain continuous worldwide deployment and operational capability to furnish claims advice to any legal office or command throughout the world. When authorized by the chain of command or competent authority, issue such claims advice or services, including establishing a claims system within a foreign country, interpreting claims aspects of international agreements, and processing claims arising from Army involvement in civil disturbances, chemical accidents under the Chemical Energy Stockpile Program, other man-made or natural disasters, and other claims designated by competent authority.

aa. Upon receiving both the appropriate authority's directive or order and full fiscal authorization, disburse the funds necessary to administer civilian evacuation, relocation, and similar initial response efforts in response to a chemical disaster arising at an Army facility.

bb. Respond to all inquiries from the President, members of Congress, military officials, and the general public on claims within USARCS' realm of responsibility.

cc. Serve as the proponent for this publication and DA Pam 27-162, both of which set forth guidance on personnel, tort, disaster and affirmative claims, as well as claims management and administration.

dd. Provide guidance for the Army's affirmative claims and carrier recovery programs, as well as other methods for recovering legal debts.

ee. Provide support for the overseas environmental claims program as designated by the DA.

ff. Execute other claims missions as designated by DOD, DA, TJAG and other competent authority.

#### **1-10. Chiefs of command claims services**

Chiefs of command claims services shall—

a. Exercise claims settlement authority as specified in this regulation, including appellate authority where so delegated.

b. Designate and grant claims settlement authority to ACOs. A grant of such authority will not be effective until coordinated with the Commander, USARCS, and an assigned office code. However, the chief of a command claims service may redesignate a CPO that already has an assigned office code as an ACO without coordination with the Commander, USARCS. The Commander, USARCS, will be informed of such a designation.

c. Designate and grant claims approval authority to CPOs. Only CPOs staffed with a claims judge advocate (CJA) or claims attorney may be granted approval authority. A grant of such authority will not be effective until coordinated with the Commander, USARCS, and assigned an office code.

d. Train claims personnel and monitor their operations and ongoing claims administration.

e. Implement pertinent claims policies.

f. Prepare and publish command claims directives.

g. Administer the command claims expenditure allowance, providing necessary data, estimates, and reports to USARCS on a regular basis.

h. Perform the responsibilities of an ACO (see para 1-11), as applicable.

i. Serve as the United States "sending State office," if so designated, when operating in an area covered by a SOFA.

j. Supervise and provide technical assistance to subordinate ACOs within the command claims service geographic area of responsibility.

#### **1-11. Heads of area claims offices**

Heads of ACOs shall—

a. Ensure that claims in their area of responsibility are promptly investigated in accordance with this regulation.

b. Ensure that each organization or activity (for example, U.S. Army Reserve (USAR) or Army National Guard of the United States (ARNGUS) unit, Reserve Officers Training Corps (ROTC) detachment, recruiting company or station, or DOD agency) within the area appoints a claims officer to investigate claims incidents not requiring investigation by a JA (see para 2-2d) and ensure that this officer is adequately trained.

c. Act as a claims settlement authority on claims that fall within the appropriate monetary jurisdictions set forth in this regulation and forward claims exceeding such jurisdictions to the Commander, USARCS, or to the chief of a command claims service, as appropriate, for action.

d. Designate CPOs and request that the Commander, USARCS, or the chief of a command claims service, as appropriate, grant claims approval authority to a CPO for claims that fall within the jurisdiction of that office, as specified under paragraphs 1-9e and 1-10b.

e. Supervise the operations of CPOs within their area.

f. Implement claims policies and guidance furnished by The Assistant Judge Advocate General (TAJAG) or the Commander, USARCS.

g. Ensure that there are adequate numbers of qualified and adequately trained CJAs or claims attorneys, claims examiners, claims adjudicators and claims clerks in all claims offices within their areas to act promptly on claims.

h. Budget for and fund claims investigations and activities, such as per diem and transportation of claims personnel, claimants and witnesses, independent medical examinations, appraisals, independent expert opinions, long distance telephone calls, recording and photographic equipment, use of express mail or couriers, and other necessary expenses.

i. Within the United States and its territories, commonwealths and possessions, procure and disseminate, within their areas of jurisdiction, appropriate legal publications on State or territorial law and precedent relating to tort claims.

j. Notify the Commander, USARCS, of all claims and potentially compensable events as required by paragraphs 2-2a and 2-12e(1); notify the chief of a command claims service of all claims and potentially compensable events.

k. Develop and maintain written plans for a disaster or civil disturbance. These plans may be internal SJA office plans or an annex to an installation or an agency disaster response plan. The plans may be internal SJA office plans or an annex to an installation or organizational plan. (See para 1-16c(4)(c).)

l. Implement the Army's Article 139 claims program. (See para 9-7.)

#### **1-12. Heads of claims processing offices**

Heads of CPOs will—

a. Investigate all potential and actual claims arising within their assigned jurisdiction, on either an area, command, or agency basis. Only a CPO that has approval authority may adjudicate and pay presented claims within its monetary jurisdiction.

b. Ensure that units and organizations within their jurisdiction have appointed claims officers for the investigation of claims not requiring a JA's investigation. See paragraph 2-2d(1)(c).

c. Budget for and fund claims investigations and activities including per diem and transportation of claims personnel, claimants and witnesses, independent medical examinations, appraisals, independent expert opinions, long distance telephone calls, recording and photographic equipment, use of express mail or couriers, and other necessary expenses.

d. Within CONUS, procure and maintain legal publications on local law relating to tort claims pertaining to their jurisdiction.

e. Notify the Commander, USARCS, of all claims and claims incidents, as required by paragraphs 2-2a and 2-12e(1) of this publication.

f. Implement the Army's Article 139 claims program (see para 9-7).

### 1-13. Chief of Engineers

The Chief of Engineers through the Chief Counsel, shall—

a. Provide general supervision of the claims activities of USACE ACOs.

b. Ensure that each USACE ACO has a claims attorney designated in accordance with paragraph 1-6.

c. Ensure that claims personnel are adequately trained, and monitor their ongoing claims administration.

d. Implement pertinent claims policies.

e. Provide for sufficient funding in accordance with existing Army regulations and command directives for temporary duty (TDY), long distance telephone calls, recording equipment, cameras, and other expenses for investigating and processing claims.

f. Take action to procure and maintain adequate legal publications on local law relating to claims arising within the United States, its territories, commonwealths and possessions.

### 1-14. Commanding General, U.S. Army Medical Command

After consulting with the Commander, USARCS, on the selection of medical claims attorneys, the Commanding General, U.S. Army Medical Command (CG, MEDCOM), through his or her SJA, shall ensure that an adequate number of qualified MCJAs or medical claims attorneys, and medical claims investigators, are assigned to investigate and process medical malpractice claims arising at Army medical centers under the CG's control. In accordance with an agreement between TJAG and The Surgeon General, such personnel shall be used primarily to investigate and process medical malpractice claims and will be provided with the necessary funding and research materials to carry out this function.

### 1-15. Chief, National Guard Bureau

The Chief, National Guard Bureau (NGB), shall—

a. Ensure the designation of a point of contact for claims matters in each State Adjutant General's office.

b. Provide the name, address, and telephone number of these points of contact to the Commander, USARCS.

c. Designate claims officers to investigate claims generated by ARNG personnel and forward investigations to the Active Army ACO that has jurisdiction over the area in which the claims incident occurred.

### 1-16. Commanders of major Army commands

Commanders of major Army commands (MACOM), through their SJAs, shall—

a. Assist USARCS in monitoring ACOs and CPOs under their respective commands for compliance with the responsibilities assigned in paragraphs 1-11 and 1-12 above.

b. Assist claims personnel in obtaining qualified expert and technical advice from command units and organizations on a nonreimbursable basis (although the requesting office may be required to provide TDY funding).

c. Assist TJAG, through the Commander, USARCS, in implementing the functions set forth in paragraph 1-9.

d. Coordinate with the ACO within whose jurisdiction a maneuver is scheduled, to ensure the prompt investigation and settlement of any claims arising from it.

## Section III

### Operations, Policies, and Guidance

#### 1-17. Operations of claims components

a. *Command claims services.* The SJA of the command shall

supervise the command claims service. If the command claims service is a separate organization, the command SJA shall designate a JA as the chief of the service. Otherwise, the SJA will be the chief of the service. An adequate number of qualified claims personnel shall be assigned to ensure that claims are promptly investigated and acted upon. With the concurrence of the Commander, USARCS, a command claims service may designate ACOs within its area of operations to carry out claims responsibilities within specified geographic areas.

b. *Area claims offices.*

(1) The ACO is the principal office for the investigation and adjudication or settlement of claims, and shall be staffed with qualified legal personnel under the supervision of the SJA, command JA, or USACE district or command legal counsel.

(2) The full-time responsibility for investigating and processing claims arising within or related to the activities of a unit or organization located within a section of the designated area may be delegated to another command, unit, or activity by establishing a CPO at the command, unit, or activity (see para 1-11d and e). Normally, all CPOs will operate under the supervision of the ACO in whose area the CPO is located. Where a proposed CPO is not under the command of the ACO parent organization, this designation may be achieved by a support agreement or memorandum of understanding between the affected commands.

(3) Normally, claims that cannot be settled by a USACE ACO will be forwarded directly to the Commander, USARCS, with notice of referral to the Chief Counsel, USACE. However, as part of his or her responsibility for litigating suits that involve civil works and military construction activities, the Chief Counsel, USACE, may require that a USACE ACO forward claims through USACE channels, provided that such requirement does not preclude the Commander, USARCS, from taking final action within the time limitations set forth in chapters 4 and 8.

c. *Claims processing offices.* If the adjudicated amount of a personnel claim under chapter 11 exceeds the head of the claims processing authority's monetary jurisdiction, the claim will be approved and paid up to that office's delegated authority and immediately forwarded to the next higher claims authority for additional payment. See para 11-2.

(1) *Claims processing offices without approval authority.* A CPO that has not been granted claims approval authority will provide for the investigation of all potential and actual claims arising within its assigned jurisdiction on an area, command, or agency basis. Once the investigation has been completed, the claims file will be forwarded to the appropriate ACO for action. Alternatively, an ACO may direct the transfer of a claims investigation from a CPO without approval authority to another CPO with approval authority, located within the ACO's jurisdiction.

(2) *Claims processing office with approval authority.* A CPO that has been granted approval authority must provide for the investigation of all potential and actual claims arising within its assigned jurisdiction, on an area, command, or agency basis, and for the adjudication and payment of all claims presented within its monetary jurisdiction. If the estimated value of a claim, after investigation, exceeds the CPO's payment authority, or if disapproval is the appropriate action, the claims file will be forwarded to the ACO unless otherwise specified in this regulation, or forwarded to USARCS or the command claims service, if directed by such service.

(3) *Medical claims processing offices.* The MCJAs or medical claims attorneys at Army medical centers, other than Walter Reed Army Medical Center, may be designated by the SJA or head of the ACO for the installation on which the center is located as CPOs with approval authority for medical malpractice claims only. Claims for amounts exceeding a medical CPO's approval authority will be investigated and forwarded to the Commander, USARCS.

(4) *Special claims processing offices.*

(a) *Designation and authority.* The Commander, USARCS, the chief of a command claims service, or the head of an ACO may designate special CPOs within his or her command for specific, short-term purposes (for example, maneuvers, civil disturbances and

emergencies). These special CPOs may be delegated the approval authority necessary to effect the purpose of their creation, but in no case will this delegation exceed the maximum monetary approval authority set forth in other chapters of this publication for regular CPOs. All claims will be processed under the claims expenditure allowance and claims command and office code of the authority who established the office or under a code assigned by USARCS. The existence of any special CPO must be reported to the Commander, USARCS, and the chief of a command claims service, as appropriate.

(b) *Maneuver damage and claims office jurisdiction.* A special CPO is the proper organization to process and approve maneuver damage claims, except when a foreign government is responsible for adjudication pursuant to an international agreement (see chap 7). Personnel from the maneuvering command should be used to investigate claims and, at the ACO's discretion, may be assigned to the special CPO. The ACO will process claims filed after the maneuver terminates. The special CPO will investigate claims arising while units are traveling to or from the maneuver within the jurisdiction of other ACOs, and forward such claims for action to the ACO in whose area the claims arose. Claims for damage to real or personal property arising on private land that the Army has used under a permit may be paid from funds specifically budgeted by the maneuver for such purposes in accordance with AR 405-15.

(c) *Disaster claims and civil disturbance.* A special CPO provided for a disaster or civil disturbance should include a claims approving authority with adequate investigatory, administrative, and logistical support, including damage assessment and finance and accounting support. It will not be dispatched prior to notification of the Commander, USARCS, whose concurrence must be obtained before the first claim is paid.

(5) *Supervisory requirements.* The CPOs discussed in subparagraphs (2) through (4) above must be supervised by an assigned CJA or claims attorney in order to exercise delegated approval authority.

## 1-18. Claims policies

### a. General.

(1) *Expeditious processing at the lowest level.* Claims investigation and adjudication should be accomplished at the lowest possible level, such as the CPO or ACO that has monetary authority over the estimated total value of all claims arising from the incident. The expeditious investigation and settlement of claims is essential to successfully fulfilling the Army's responsibilities under the claims statutes implemented by this publication.

(2) *Notice to claimants of technical errors in claim.* When technical errors are found in a claim's filing or contents, claimants should be advised of such errors and the need to correct the claim. If the errors concern a jurisdictional matter, a record should be maintained and the claimant should be immediately warned that the error must be corrected before the statute of limitations (SOL) expires.

b. *Cooperative investigative environment.* During claims investigation, every effort should be made to create a cooperative environment that engenders the free exchange of information and evidence. The goal of obtaining sufficient information to make an objective and fair analysis should be paramount. Personal contact with claimants or their representatives is essential both during investigation and before adjudication. When settlement is not feasible, issues in dispute should be clearly identified to facilitate resolution of any reconsideration, appeal or litigation.

### c. Claims directives and plans.

(1) *Directives.* Two copies of command claims directives will be furnished to the Commander, USARCS. ACO directives will be distributed to all DA and DOD commands, installations and activities within the ACO's area of responsibility, with an information copy to the Commander, USARCS.

(2) *Disaster and civil preparedness plan.* One copy of all ACOs' disaster or civil disturbance plans or annexes will be furnished to the Commander, USARCS.

d. *Interpretations.* The Commander, USARCS, will publish written interpretations of this publication's provisions and formulate and publish policy on those matters that are within agency discretion. Interpretations and policies that refer to this provision will have the same force and effect as this publication.

e. *Authority to grant exceptions to and deviations from this publication.* If, in particular instances, it is considered to be in the best interests of the Government, the Commander, USARCS, may authorize deviations from this publication's specific requirements, except as to matters based on statutes, treaties and international agreements, executive orders, controlling directives of the Attorney General or Comptroller General, or other publications that have the force and effect of law.

f. *Guidance.* The Commander, USARCS, may publish bulletins, manuals, handbooks and notes, and a DA Pamphlet that provides guidance to claims authorities on administrative and procedural rules implementing this regulation. These will be binding on all Army claims personnel.

g. *Communication.* All claims personnel are authorized to communicate directly with USARCS personnel for guidance on matters of policy or on matters relating to the implementation of this regulation.

h. *Private relief bills.* The issue of a private relief bill is one between a claimant and his or her Congressional representative. There is no established procedure under which the DA sponsors private relief legislation. Claims personnel shall remain neutral in all private relief matters and shall not make any statement that purports to reflect the DA's position on a private relief bill.

## 1-19. Guidance concerning disclosure of information and assistance

a. *Conflict of interest.* Government personnel are forbidden to represent any claimant or to receive any payment or gratuity for services rendered. They may not accept any share or interest in a claim or assist in its presentation, under penalty of Federal criminal law (18 USC 203 and 205).

### b. Release of information.

(1) Government personnel are prohibited from disclosing information that may be the basis of a claim or any evidence of recording any claims matter except as authorized by statute or regulatory authority. A statutory exemption or privilege may not be waived. Similarly, documents subject to such statutorily required nondisclosure, exemption, or privilege may not be released. Regarding other exemptions and privileges, authorities may waive such exemptions or privileges and direct release of the protected documents, upon balancing all pertinent factors, including finding that release of protected records will not harm the Government's interest, will promote settlement of a claim and will avoid unnecessary litigation, or for other good cause.

(2) All requests for records and information made pursuant to the Freedom of Information Act (FOIA), 5 USC 552, or the Privacy Act of 1974 (PA), 5 USC 552a, will be processed in accordance with the procedures set forth in AR 25-55 and AR 340-21, respectively.

(a) Any request for DOD records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of AR 25-55. Requests for DOD records submitted by a claimant or claimant's attorney will be processed under both the FOIA and under the PA when the request is made by the subject of the records requested and those records are maintained in a system of records. Such requests will be processed under the FOIA time limits and the PA fee provisions. Withheld information must be exempt from disclosure under both Acts.

(b) Requests that cite both Acts or neither Act are processed under both Acts, using the FOIA time limits and the PA fee provisions. For further guidance, see AR 25-55, paragraphs 1-301 and 1-503.

(3) The following records may not be disclosed:

(a) Medical quality assurance records exempt from disclosure pursuant to 10 USC 1102(a).

(b) Records exempt from disclosure pursuant to appropriate balancing tests under FOIA exemption (6) (clearly unwarranted invasion of personal privacy), exemption (7)(c) (reasonably constitutes unwarranted invasion of privacy, and law enforcement records (5 USC 552 (b)) unless requested by the subject of the record.

(c) Records protected by the PA.

(d) Records exempt from disclosure pursuant to FOIA exemption (1) (National security) (5 USC 552 (b)), unless such records have been properly declassified.

(e) Records exempt from disclosure pursuant to the attorney-client privilege under FOIA exemption (5) (5 USC 552 (b)), unless the client consents to the disclosure.

(4) Records within a category for which withholding of the record is discretionary (AR 25-55, para 3-101), such as exemptions under the deliberative process or altering work product privileges (exemption (5) 5 USC 552 (b)) may be released when there is no foreseeable harm to Government interests in the judgment of the releasing authority.

(5) When it is determined that exempt information should not be released, or a question as to its releasability exists, forward the request and two copies of the responsive documents to the Commander, USARCS. The Commander, USARCS, acting on behalf of TJAG (the initial denial authority), may deny release of records processed under the FOIA only. The Commander, USARCS, will forward to TJAG all such requests processed under both the FOIA and PA. TJAG is the access and amendment refusal authority for PA requests (AR 340-21, para 1-7i).

c. *Claims assistance.* The foregoing prohibitions do not apply to information and assistance provided in the performance of official duty. Any person who indicates a desire to file a claim against the United States cognizable under one of the chapters of this regulation will be instructed concerning the procedure to follow. The claimant will be furnished claim forms and, when necessary, assisted in completing claim forms, and may be assisted in assembling evidence. Claims personnel may not assist any claimant in determining what amount to claim. In the vicinity of a field exercise, maneuver or disaster, claims personnel may disseminate information on the right to present claims, procedures to be followed, and the names and location of claims officers and the USACE repair teams. When the government of a foreign country in which U.S. Armed Forces are stationed has assumed responsibility for the settlement of certain claims against the United States, officials of that country will be furnished as much pertinent information and evidence as security considerations permit.

## **1-20. Single service claims responsibility (DODD 5515.8)**

a. *Statutes and agreements.* DOD has assigned single service responsibility for the settlement of certain claims in certain countries under the following statutes and agreements:

(1) FCA (10 USC 2734); DODD 5515.3.

(2) MCA (10 USC 2733); DODD 5515.3.

(3) Pro rata cost-sharing of claims pursuant to international agreements, 10 USC 2734a and 2734b.

(4) NATO SOFA (4 UST 1792, TIAS 2846) and other similar agreements.

(5) Act of September 25, 1962 (42 USC 2651-2653), Claims for reimbursement for medical care furnished by the United States.

(6) Claims not cognizable under any other provision of law, 10 USC 2737.

(7) The FCCA (31 USC 3711-3719), as implemented by DODD 7045.13; claims and demands by the Government of the United States, Act of June 10, 1921 (31 USC 71).

(8) Advance Payments, 10 USC 2736.

b. *Specified foreign countries.* Responsibility for the settlement of claims cognizable under the laws listed above has been assigned to military departments pursuant to DODD 5515.8, as supplemented by executive agreement and other competent directives.

c. *When claims responsibility has not been assigned.* The appropriate unified and specified commander may, on an interim basis

before receiving confirmation and approval from the General Counsel, DOD, assign single service responsibility for processing claims in countries where such assignment has not already been made when necessary to implement contingency plans.

## **1-21. Cross-servicing of claims (DODD 5515.3)**

a. *Where another military department has single service claims responsibility.* Claims against and in favor of the United States resulting from activities of the U.S. Army or DA soldiers or civilian employees in a country for which another military department has been assigned single service claims responsibility will be investigated by the Army and referred to that department for settlement.

b. *Where claims responsibility has not been assigned.* Claims cognizable under the FCA or the MCA that are generated by another military department within a foreign country for which single service claims responsibility has not been assigned, may be settled by the Army upon request of the military department concerned. Conversely, Army claims may, in appropriate cases, be referred to another military department for settlement.

c. *Claims generated by the Coast Guard.* Claims, resulting from the activities of, or generated by, soldiers or civilian employees of the Coast Guard while it is operating as a service of the U.S. Department of Transportation may, upon request, be settled under this regulation by a foreign claims commission appointed as authorized herein, but they will be paid from Coast Guard appropriations (10 USC 2734(a)).

## **1-22. Adjudication of claims**

Any instructions contained in this regulation that both differ from the previous version and affect the adjudication of a claim will apply only to claims filed on or after the effective date of this regulation.

# **Chapter 2 Investigation and Processing of Claims**

## **Section I Claims Investigative Responsibility**

### **2-1. General**

a. This chapter addresses the investigation, processing, evaluation, and settlement of tort and tort-related claims against the United States. These provisions do not apply to personnel claims (chapter 11).

b. Claims investigation requires team effort between USARCS, command claims services, area claims offices (ACO) including U.S. Army Corps of Engineers (USACE) District Offices, claims processing offices (CPO), and unit claims officers. Essential to this effort is the immediate investigation of claims incidents. Prompt investigation depends on the timely reporting of claims incidents as well as continuous communication between all commands or echelons bearing claims responsibility.

### **2-2. Area claims office responsibility**

a. *Notification to USARCS.* The claims judge advocate (CJA) or claims attorney receiving notice of a potentially compensable event (PCE) that requires investigation will immediately refer it to the appropriate claims office. The Commander, USARCS, will be notified of all major incidents involving serious injury or death or those in which non-Federal property damage exceeds \$25,000.

b. *Geographic concept.* The ACO in whose geographic area a claims incident occurs is primarily responsible for initiating investigation and processing of any claim filed in the absence of a formal transfer of responsibility (see section III below). DOD and Army organizations whose personnel are involved in the incident will cooperate with, and assist, the ACO, regardless of where the former may be located.

c. *Identifying claims incidents.*

(1) Investigation is required when—

(a) Property other than that belonging to the Government is damaged, lost, or destroyed by an act or omission of a Government employee or a member of NATO forces stationed within the United States.

(b) A civilian other than an employee of the U.S. Government is injured or killed by an act or omission of a Government employee or by a member of a NATO force stationed within the United States. (This category includes patients injured during treatment by a health care provider's accident or substandard care.)

(c) A claim is filed.

(d) A competent authority or another armed service or Federal agency requires investigation.

(2) Investigation on the merits is not necessary if proper investigation determines that a U.S. soldier or civilian employee was the only party to sustain loss, damage, or injury from the incident and that such loss, damage, or injury occurred incident to service or within the scope of such party's employment.

(3) When the damage or injury results directly or indirectly from combat, personnel may limit their investigation to the extent necessary to determine whether the combat exception applies.

(4) Determining who is a Government employee is a matter of Federal, not local, law. Categories of Government employees usually accepted as tortfeasors under Federal law are—

(a) Military personnel (soldiers of the Army or other Services where the Army exercises single service jurisdiction on foreign soil), who are serving on full-time active duty in a pay status, including soldiers:

1. Assigned to units performing active or inactive-duty.
2. Serving as Reserve Officer Training Corps (ROTC) instructors (but not Junior ROTC instructors unless on active duty).
3. Serving as Army National Guard (ARNG) instructors or advisors.

4. On duty or training with other Federal agencies, for example: the National Aeronautics and Space Administration, the Department of State, the Navy, the Air Force or DOD (Federal agencies other than the armed service to which the soldier is attached may also provide a remedy). See DA Pam 27-162, paragraph 2-32.

5. Assigned as students or ordered into training at a non-Federal civilian educational institution, hospital, factory, or other industry (excluding soldiers on excess leave or those for whom the training institution or organization has assumed liability by written agreement).

6. Serving on full-time duty at nonappropriated fund (NAF) activities.

7. Of the United States Army Reserve (USAR) and ARNG on active duty under Title 10, USC.

(b) Military personnel who are soldiers of Reserve Units (other than members of the ARNG), including ROTC cadets who are Reservists while they are at annual training, during periods of active duty and inactive-duty training.

(c) Military personnel who are soldiers of the ARNG while engaged in training or duty under 32 USC 316, 502, 503, 504, or 505 for claims arising on or after 29 December 1981 under the Federal Tort Claims Act (FTCA), the Non-Scope Claims Act, or the National Guard Claims Act (NGCA), unless performing duties in furtherance of a mission for a State, Commonwealth, territory or possession.

(d) Civilian officials and employees of both the DOD and DA (there is no practical significance to the distinction between the terms "official" and "employee"), including but not limited to the following:

1. Civil service and other full-time employees of both the DOD and DA who are paid from appropriated funds.

2. Persons providing direct health care services pursuant to personal service contracts under 10 USC 1091 or where another person exercised control over the health care provider's day-to-day practice. When the conduct of a health care provider performing services under a personal service contract is implicated in a claim, the CJA, Medical Claims Judge Advocate (MCJA), or claims attorney should

consult with USARCS to determine if that health care provider can be considered an employee for purposes of coverage.

3. Employees of a NAF instrumentality (NAFI) if it is an instrumentality of the United States and thus a Federal agency. To determine whether a NAFI is a "Federal agency," consider both whether it is an integral part of the Army charged with an essential DA operational function and also what degree of control and supervision DA personnel exercise over it. Members or users, unlike employees of NAFs, are not considered Government employees; the same is true of family child care providers (FCCP). However, claims arising out of the use of some NAF property or from the acts or omissions of FCCPs may be payable from such funds under chapter 12 as a matter of policy, even when the user is not acting within the scope of employment and the claim is not otherwise cognizable under any of the other authorities described in this regulation.

(e) Prisoners of war and interned enemy aliens.

(f) Civilian employees of the District of Columbia ARNG, including those paid under "service contracts" from District of Columbia funds.

(g) Civilians serving as ROTC instructors paid from Federal funds.

(h) ARNG technicians employed under 32 USC 709(a) for claims accruing on or after 1 January 1969 (PL 90-486, 13 August 1968 (82 Stat. 755)), unless performing duties solely in pursuit of a mission for a State, commonwealth, territory or possession.

(i) Persons acting in an official capacity for the DOD or DA either temporarily or permanently with or without compensation, including but not limited to the following:

1. Dollar-a-year personnel.
2. Members of advisory committees, commissions, or boards.
3. Volunteers serving in an official capacity in furtherance of the business of the United States limited to those categories set forth in DA Pam 27-162, paragraph 2-67e.

d. Delegation of investigative responsibility.

(1) An ACO is authorized to carry out its investigative responsibility as follows:

(a) Commanders and heads of Army and DOD units, activities, or components will appoint a commissioned, warrant, or noncommissioned officer or a qualified civilian employee to investigate a claims incident in the manner set forth in DA Pam 27-162 and this publication. An ACO will direct such investigation to the extent deemed necessary.

(b) CPOs are responsible for investigating claims incidents arising out of the activities and operations of their command or agency. An ACO may assign area jurisdiction to a CPO after coordination with the appropriate commander to investigate claims incidents arising in the ACO's designated geographic area. (See para 1-5f.)

(c) Claims incidents involving patients arising from treatment by a health care provider, as described in subparagraph c(4)(d)(2) above, in an Army medical treatment facility (MTF) will be investigated by a CJA, MCJA, or claims attorney rather than by a unit claims officer.

(2) An ACO will publish and distribute a claims directive to all DOD and Army installations and activities including active, Army Reserve, and ARNG units as well as units located on the post at which the ACO is located. The directive will outline each installation's and activity's claims responsibilities. It will institute a serious claims incident reporting system. DA Pam 27-162, figure 2-4, presents a model directive.

### 2-3. Command claims service responsibility

A command claims service is responsible for the investigation and processing of claims incidents arising in its geographic area of responsibility or by any foreign claims commission (FCC) it appoints. This responsibility will be carried out by an ACO or a CPO to the extent possible. A command claims service will publish a claims directive outlining the geographic areas of claims investigative responsibilities of each of its installations and activities, requiring each ACO or CPO to report all serious claims incidents directly to the Commander, USARCS.

## 2-4. USARCS responsibility

USARCS exercises technical supervision over all claims offices, providing guidance on specific cases throughout the claims process, including the method of investigation. Where indicated, USARCS may investigate a claims incident that normally falls within a command claims service's, an ACO's, or a CPO's jurisdiction. USARCS typically acts through an area action officer (AAO) who is assigned as the primary point of contact with command claims services, ACOs or CPOs within a given geographic area. In areas outside the United States and its commonwealths, territories and possessions, where there is no command claims service or ACO, USARCS is responsible for investigation and appointment of FCCs.

## 2-5. Release of information practices

USARCS, in conjunction with a command claims service, an ACO, or a CPO may release, with or without a request from the claimant or attorney, unclassified attorney work product whenever such release may help settle the claim or avoid unnecessary litigation. (See para 1-18 of this publication.) DA Pam 27-162, paragraphs 1-10 and 2-5, discusses other information release practices, including USARCS' responsibilities as the initial denial authority.

## Section II

### Filing and Receipt of Claims

## 2-6. Procedures for accepting claims

All ACOs and CPOs will institute procedures to ensure that potential claimants or attorneys speak to a CJA, claims attorney, investigator, or examiner. On initial contact, claims personnel will render assistance, discuss all aspects of the potential claim, and determine what statutes or procedures apply. Assistance will be furnished to the extent set forth in subparagraph 1-18c. To advise claimants on the correct remedy, claims personnel will familiarize themselves with the remedies listed in DA Pam 27-162, chapter 2, section III.

## 2-7. Review of administrative claims

a. A claim is a writing that contains a sum certain for each claimant, that is signed by each claimant or by an authorized representative who must furnish written authority to sign on a claimants' behalf. The writing must contain enough information to permit investigation. The writing must be received not later than two years from the date the claim accrues. A claim under the Foreign Claims Act (FCA) may be presented orally to either the United States or the government of the foreign country in which the incident occurred, within two years, provided that it is reduced to writing not later than three years from the date of accrual. A claim may be transmitted by facsimile or telegram. However, a copy of an original claim must be submitted as soon as possible.

b. Normally, a claim will be presented on a Standard Form (SF) 95 (Claim for Damage, Injury, or Death). When the claim is not presented on an SF Form 95, the claimant will be requested to complete an SF Form 95 to ease investigation and processing.

## 2-8. Claims acknowledgment

Claims personnel will acknowledge all claims immediately upon receipt, in writing, by telephone, or in person. A defective claim will be acknowledged in writing, pointing out its defects. Where the defects render the submission jurisdictionally deficient based on the definition in subparagraph 2-7a above, the claimant or attorney will be informed in writing of the need to present a proper claim not later than two years from the date of accrual.

## 2-9. Identification of a proper claim

a. A properly filed claim meeting the definition of "claim" in subparagraph 2-7a above tolls the two-year statute of limitations (SOL) even though the documents required to substantiate the claim are not present, such as those listed on the back of an SF Form 95 or in the Attorney General's regulations implementing the FTCA, 28 CFR 14.1 et. seq. (See DA Pam 27-162, figure 4-2.) However,

refusal to provide such documents may lead to dismissal of a subsequent suit under the FTCA or denial of a claim under other chapters of this regulation.

b. Receipt of a claim by another Federal agency does not toll the SOL. Receipt of a U.S. Army claim by DOD, Navy, or Air Force does toll the SOL.

c. The guidelines set forth in Federal FTCA case law will apply to other chapters of this regulation in determining whether a proper claim has been filed.

## 2-10. Identification of a proper claimant

The following are proper claimants:

a. *Claims for property loss or damage.* A claim may be presented by the owner of the property or by a duly authorized agent or legal representative in the owner's name. As used in this regulation, the term "owner" includes the following:

(1) *For real property.* The mortgagor, mortgagee, executor, administrator, or personal representative, if he or she may maintain a cause of action in the local courts involving a tort to the specific property, is a proper claimant. When notice of divided interests in real property is received, the claim, if feasible, should be treated as a single claim and a release from all interests must be obtained.

(2) *For personal property.* A claim may be presented by a bailee, lessee, mortgagee, conditional vendor, or others holding title for purposes of security only, unless specifically prohibited by the applicable chapter. When notice of divided interests in personal property is received, the claim, if feasible, should be treated as a single claim and a release from all interests must be obtained. Property loss is defined as loss of actual tangible property, not consequential damage resulting from such loss.

b. *Claims for personal injury or wrongful death.*

(1) *For personal injury.* A claim may be presented by the injured person or by a duly authorized agent or legal representative. Personal injury claims deriving from the principal injury may be presented by other parties. A claim may not be presented by "volunteers," such as those who voluntarily pay damages on behalf of an injured party. See subparagraph g(3) below.

(2) *For wrongful death.* A claim may be presented by the executor or administrator of the deceased's estate, or by any person determined to be legally or beneficially entitled. The amount allowed will be apportioned, to the extent practicable, among the beneficiaries in accordance with the law applicable to the incident.

c. *By an agent or legal representative.* A claimant's agent or legal representative who presents a claim will do so in the claimant's name and sign the form in such a way that indicates the agent's or legal representative's title or capacity. When a claim is presented by an agent or legal representative—

(1) It must contain written evidence of the agent's or legal representative's authority to sign, such as a power of attorney, or

(2) It must refer to or cite the statute granting authority.

d. *Amount claimed.* Normally, a claim will include all damages that accrue by reason of the incident. Where a claimant has a claim for property damage and personal injury arising from the same incident, the property damage claim may be paid, under certain circumstances, prior to the payment of the personal injury claim. See paragraph 2-53.

e. *Subrogation.* A claim may be presented by the subrogee in his or her own name if authorized by the law of the place where the incident giving rise to the claim occurred, under chapters 4 or 8 only. A lienholder is not a proper claimant and should be distinguished from a subrogee.

f. *Contribution or indemnity.* A claim may be filed for contribution or indemnification by the party who was held liable as a joint tortfeasor. Such a claim is not perfected until payment has been made by the claimant/joint tortfeasor.

g. *Transfer or assignments.*

(1) Under the Antiassignment Act (31 USC 3727) and AR 37-1, a transfer or assignment is null and void except where it occurs by operation of law or after a voucher for the payment has been issued. The following are null and void:

(a) Every purported transfer or assignment of a claim against the

United States, or any interest, in whole or in part, on a claim, whether absolute or conditional; and

(b) Every power of attorney or other purported authority to receive payment for all or part of any such claim.

(2) The Antiassignment Act was enacted to eliminate multiple payment of claims, to cause the United States to deal only with original parties and to prevent persons of influence from purchasing claims against the United States.

(3) In general, this statute prohibits voluntary assignments of claims, with the exception of transfers or assignments made by operation of law. The operation of law exception has been held to apply to claims passing to assignees because of bankruptcy proceedings, assignments for the benefit of creditors, corporate liquidations, consolidations, or reorganizations, and where title passes by operation of law to heirs or legatees. Subrogated claims that arise under a statute are not barred by the Antiassignment Act. For example, subrogated workers' compensation claims are cognizable when presented by the insurer under chapters 4 or 8.

(4) Subrogated claims that arise pursuant to contractual provisions may be paid to the subrogee if the legal basis for the subrogated claim is recognized by State statute or case law, under only chapters 4 or 8. For example, an insurer that issues an insurance policy becomes subrogated to the rights of a claimant who receives payment of a property damage claim. Generally, such subrogated claims are authorized by State law and are therefore not barred by the Antiassignment Act.

(5) Before claims are paid, it is necessary to determine whether there may be a valid subrogated claim under Federal or State statute or subrogation contract held valid by State law.

h. *Interdepartmental waiver rule.* Neither the U.S. Government nor any of its instrumentalities are proper claimants due to the interdepartmental waiver rule. This rule bars claims by any organization or activity of the Army, whether or not the organization or activity is funded with appropriated or nonappropriated funds. Certain Federal agencies are exempt from the interdepartmental waiver rule, such as the Railroad Retirement Commission. See DA Pam 27-162, paragraph 2-32f.

i. *States are excluded.* If a State, U.S. commonwealth, territory, or the District of Columbia maintains a unit to which ARNG personnel causing the injury or damage are assigned, such Governmental entity is not a proper claimant for loss or damage to its property. A unit of local government other than a State, commonwealth, or territory is a proper claimant.

j. *Government tortfeasors.* A soldier or U.S. Government civilian employee who damages his or her personal property while acting within the scope of employment is not a proper claimant for damage to that property.

## **2-11. Amendment of claim**

A claim may be amended at any time prior to final agency action. The extent and nature of acceptable amendments are discussed in DA Pam 27-162, paragraph 2-11.

## **Section III Processing of Claims**

### **2-12. Action upon receipt of claim**

a. A properly filed claim stops the running of the SOL when it is received by any organization or activity of the DOD or the U.S. Armed Services. Placing a claim in the mail does not constitute filing. The first Army claims office that receives the claim will date, time stamp, and initial the claim as of the date the claim was initially received "on post," not by the claims office. If initially received close to the SOL's expiration date by an organization or activity that does not have a claims office, claims personnel will discover and record in the file the date of original receipt.

b. The ACO or CPO that first receives the claim will enter the claim in both the database and claims journal, and number the

claim. The claim will bear this number throughout the claims process. Upon transfer, a new number will not be assigned by the receiving office.

c. The claim will be transferred if the claim incident arose in another ACO's geographic area; the receiving ACO will use the claims number originally assigned.

d. NAF claims that relate to claims determined cognizable under chapter 12 will be marked with the symbol "NAF" immediately following the claimant's name, to preclude erroneous payment from appropriated funds (APF). This symbol will also be included in the subject line of all correspondence.

e. Upon receipt, copies of the claims will be furnished as follows:

(1) To USARCS, if the amount claimed exceeds \$25,000, or \$50,000 per incident.

(2) To the appropriate MTF Commander; MEDCOM, ATTN: MCHO-CL-Q, 2050 North Road, Fort Sam Houston, Texas 78234-6000; and Department of Legal Medicine, Armed Forces Institute of Pathology (AFIP), 6803 Colesville Road, Metro Plaza, Suite 860, Silver Spring, Maryland 20910-9813, if it is a medical malpractice claim.

(3) To HQ, Army Air Force Exchange Service (AAFES), ATTN: FA-I, P.O. Box 65048, Dallas, Texas 75265-6428, if the claim is against AAFES.

(4) To Army Central Insurance Fund, ATTN: CFSG-RM-I, Room 1256, 2461 Eisenhower, Alexandria, Virginia 22331-0501, if the claim involves a NAFI, including a recreational user or FCCP. See chapter 12.

f. ACOs or CPOs will furnish a copy of any medical or dental malpractice claim to the MTF or dental treatment facility commander and advise the commander of all subsequent actions. The commander will be assisted in his or her responsibility to complete DD Form 2526 (Case Abstract).

### **2-13. Opening claims files**

A claims file will be opened when—

a. Information that requires investigation under subparagraph 2-2b is received.

b. Records or other documents are requested by a potential claimant or legal representative.

c. A claim is filed.

### **2-14. Arrangement of file**

All claim files will be maintained in a standard order. When documents exceed one-half inch in thickness, claims office personnel will use a six-sided folder in the manner set forth in DA Pam 27-162, paragraph 2-14.

### **2-15. Mirror file system**

When an ACO or a CPO receives a claim stating amounts within USARCS' monetary jurisdiction or meeting one of the criteria set forth in 28 CFR 14.6 requiring Department of Justice (DOJ) review, they should label each document in the claim file with the assigned claim number and furnish a duplicate claim file to USARCS' AAO. At least once weekly, all additional documents received will be labeled with the assigned claim number and a copy forwarded to USARCS' AAO. This allows for continuous monitoring and discussion between the ACO or CPO and the USARCS AAO, and results in earlier disposition.

### **2-16. Transfer of claims**

Claims filed with the wrong Federal agency will be immediately transferred to the proper agency together with notice of same to the claimant or legal representative. Where multiple Federal agencies are involved, other agencies will be contacted and a lead agency established to take all actions on the claim. Where the DA is the lead agency, any final action will include other agencies. Similarly, where another agency is the lead agency, that agency will be requested to include DA in any final action. Such inclusion will prevent multiple dates for filing suit or appeal.



## 2-17. Use of small claims procedures

Small claims procedures are authorized for use whenever a claim may be settled for \$2,500 or less. These procedures are designed to save processing time and eliminate the need for most of the documentation otherwise required. These procedures are described in DA Pam 27-162, paragraphs 2-17 and 2-42.

## 2-18. Determination of correct statute

*a.* When Congress enacted the various claims statutes, it intended to allow Federal agencies to settle meritorious claims. A claim must be considered under other statutes in this regulation unless one particular statute precludes the use of other statutes, whether the claim is filed on DD Form 1842 (Claim for Loss of or Damage to Personal Property Incident to Service) or SF Form 95. Prior to denial of a chapter 11 claim, consider whether it may fit within the scope of chapters 3 or 4 and, especially where indicated, question the claimant to determine whether the claim sounds in tort.

*b.* Certain remedies exclude all others:

(1) The Court of Federal Claims has exclusive jurisdiction over U.S. Constitution Fifth Amendment takings, express or implied governmental contractual losses, intangible property losses and damage to oyster beds caused by dredging or other operations in conjunction with river or harbor improvements. Claims of this nature for \$10,000 or less may be filed in a U.S. District Court. However, there is no administrative remedy.

(2) The FTCA preempts all other tort remedies in the United States, its commonwealths, territories and possessions. However, it does not preclude the use of the Military Claims Act (MCA) for claims arising out of noncombat activities or brought by soldiers for incident-to-service property losses sustained within the United States.

(3) Admiralty and maritime jurisdiction is an exclusive jurisdiction within the United States and its territorial waters. Hence, the various maritime statutes are exclusive of other remedies. Outside the United States, a maritime claim may be processed under the MCA or FCA with permission of the Commander, USARCS. The claimant may use the Army Maritime Claims Settlement Act (AMCSA) as an option. Suit may be filed under the Suits in Admiralty Act (SIAA) or Public Vessels Acts (PVA) without first filing an administrative claim, except where administrative filing is required by the Admiralty Extension Act (AEA). See chapter 8 of this publication.

*c.* Rules regarding the procedures used under various statutes are set forth in DA Pam 27-162, paragraph 2-18.

## 2-19. Status of Forces Agreement claims

*a.* Claims arising out of the performance of official duties in a foreign country where the United States is the sending State must be filed and processed under a SOFA, provided that the claimant is a proper party claimant under the SOFA. DA Pam 27-162, paragraph 2-19 sets forth the rules applicable in particular countries. A SOFA provides an exclusive remedy subject to waiver as set forth in subparagraph 3-4a(8) of this regulation.

*b.* Single-service jurisdiction is established for all foreign countries in which a SOFA is in effect and for certain other countries. A list of these countries appears at DA Pam 27-162, figure 7-3. Claims will be processed by the Service exercising single-service responsibility. In the United States, USARCS is the receiving State office and all SOFA claims should be forwarded immediately to USARCS for action. Appropriate investigation under chapter 2 procedures is required of an ACO or a CPO under USARCS' direction.

## 2-20. The Foreign Claims Act

*a.* Claims by foreign inhabitants, arising in a foreign country, which are not cognizable under a SOFA, fall exclusively under the FCA. The determination as to whether a claimant is a foreign inhabitant is governed by the rules set out in chapters 3 and 10. In case of doubt, this determination must be based on information

obtained from the claimant and others, particularly where the claimant is a former U.S. service member or a U.S. citizen residing in a foreign country.

*b.* Tort claims will be processed by the armed service that exercises single-service responsibility. When requested, the Commander, USARCS, may furnish a Judge Advocate or civilian attorney to serve as a Foreign Claims Commission (FCC) for another Service. See chapter 10.

## 2-21. The Army National Guard Claims Act.

*a.* Claims attributed to the acts or omissions of ARNG personnel in the course of employment fall into the categories set forth in chapter 6 of this publication.

*b.* An ACO will establish with a State claims office routine procedures for the disposition of claims, designed to ensure that the United States and State authorities do not issue conflicting instructions for processing claims. (See DA Pam 27-162, figure 2-51, for a list of State claims offices). The procedures will require personnel to advise the claimant of any remedy against the State or its insurer.

(1) Where the claim arises out of the act or omission of a member of the ARNG or a person employed under 32 USC 709, it must be determined whether the employee is acting on behalf of the State or the United States. For example: an ARNG pilot employed under Section 709 may be flying on a State mission, Federal mission, or both, on the same trip. This determination will control the disposition of the claim. If agreement with the concerned State cannot be reached and the claim is otherwise payable, efforts may be made to enter into a sharing agreement with the State concerned. The following procedures are required in the event there is a remedy against the State and the State refuses to pay or the State maintains insurance coverage and the claimant has filed an administrative claim against the United States. First, forward the file and the tort claim memorandum, including information on the status of any judicial or administrative action the claimant has taken against the State or its insurer to the Commander, USARCS. Upon receipt, the Commander, USARCS, will determine whether to require the claimant to exhaust his or her remedy against the State or its insurer or whether the claim against the United States can be settled without requiring such exhaustion. If the Commander, USARCS, decides to follow the latter course of action, he or she will also determine whether to obtain an assignment of the claim against the State or its insurer and whether to initiate recovery action to obtain contribution or indemnification. The State or its insurer will be given appropriate notification in accordance with State law.

(2) If an administrative claim remedy exists under State law or the State maintains liability insurance, the Commander, USARCS, or an ACO acting upon the Commander, USARCS' approval, may enter into a sharing agreement covering payment of future claims. The purpose of such an agreement is to determine in advance whether the State or the DA is responsible for processing a claim—did the claim arise from a Federal or State mission? — to expedite payment in meritorious claims and to preclude double recovery by a claimant.

## 2-22. Third-party claims involving an independent contractor

*a.* Upon receipt, all claims will be examined to determine whether a contractor of the United States is the tortfeasor. If so, the claimant or legal representative will be notified of the name and address of the contractor and further advised that the United States is not responsible for the acts or omissions of an independent contractor. This will be done prior to any determination as to the contractor's degree of culpability as compared to that of the United States.

*b.* If, upon investigation, the damage is considered to be primarily due to the contractor's fault or negligence, the claim will be referred to the contractor or the contractor's insurance carrier for settlement and the claimant will be so advised.

## **2-23. Claims for injury or death of contractor employees**

Upon receipt of a claim for injury or death of a contractor employee, a copy of the portions of the contract applicable to claims and workers' compensation will be obtained, either through the contracting office or from the contractor. Claims personnel must find out the status of any claim for workers' compensation benefits as well as whether the United States paid the premiums. The goal is to involve the contractor in any settlement where indicated in the manner set forth in DA Pam 27-162, paragraphs 2-23 and 2-82.

## **2-24. Maritime claims**

Upon receipt, maritime claims will be identified as such and the claimant placed on written notice that all action must be completed not later than two years from the date of accrual. See chapter 8 of this regulation and DA Pam 27-162, paragraph 2-24. In case of doubt as to whether the U.S. maritime jurisdiction has been invoked, immediate inquiry will be made of the appropriate AAO at USARCS.

## **2-25. Postal and UPS claims**

a. Claims by the U.S. Postal Service (USPS) for funds and stock are processed entirely by USARCS with assistance from the Military Postal Service Agency.

b. Claims for loss of registered and insured mail are processed by the ACO or CPO having jurisdiction over the particular Army post office under chapter 3. DA Pam 27-162, paragraphs 2-25 and 2-53, outlines the procedures concerning such claims.

c. Claims for loss of, or damage to, parcels delivered by United Parcel Service (UPS) are the responsibility of UPS. See DA Pam 27-162, paragraph 2-25c.

## **2-26. Blast damage claims**

After completing an investigation and prior to final action, all blast damage claims resulting from Army firing and demolition activities must be forwarded to the Commander, USARCS, for technical review. The sole exception to this rule is when a similar claim citing the same time, place and type of damage, as one which has already received technical review is filed. See DA Pam 27-162, paragraphs 2-26 and 2-46 through 2-49, for methods of processing.

## **2-27. Privately owned vehicle claims**

Third party tort claims arising within the United States from a soldier's use of a privately owned vehicle (POV) while allegedly within the scope of employment must be forwarded to the Commander, USARCS, for review and consultation before final action. The claim will be investigated and a copy of the soldier's POV insurance policy will be obtained prior to forwarding. When the tort claim arises in a foreign country, follow the provisions of Chapter 10.

## **2-28. Real estate claims**

Claims for rent, damage, or other payments involving the acquisition, use, possession or disposition of real property or interests therein, are generally payable under AR 405-15. These claims are handled by the Real Estate Claims Office in the appropriate USACE District or a special office created for a deployment. Directorate of Real Estate, Office of the Chief of Engineers, has supervisory authority. Claims for damage to real property and incidental personal property, but not for rent (for example, claims arising during a maneuver or deployment) may be payable under chapters 3 or 10. However, priority should be given to the use of AR 405-15 as it is more flexible and expeditious. See DA Pam 27-162, paragraphs 2-28 and 3-3, for methods and procedures.

## **2-29. Claims by contractors for loss or damage to their property located on DOD or Army installations or activities**

Claims by contractors for property loss or damage are not payable unless the property is damaged by an in-scope act or is the subject of a bailment. Refer such claims to the contracting officer for a

determination as to whether the United States assumed responsibility for safeguarding the property. If it is found that the Government did assume responsibility, the contracting officer should determine whether the claim is payable under the contract. If responsibility was not assumed, process the claim under this regulation.

## **2-30. Claims arising out of gratuitous use of DOD or Army installations, vehicles or equipment**

a. Before the commencement of any event that involves the use of DOD or Army land, vehicles, equipment or Army personnel for community activities, the Command involved should be advised to first determine and weigh the risk to potential third-party claimants against the benefits to the DOD or the Army. Where such risk is excessive, try to obtain an agreement from the sponsoring civilian organization holding the Army harmless. When feasible, third-party liability insurance may be required from the sponsor and the United States added to the policy as a third-party insured.

b. When Army equipment and personnel are used for debris removal relief pursuant to the Federal Disaster Relief Act, 42 USC 5173, the State is required to assume responsibility for third-party claims. The senior judge advocate for a task force engaged in such relief should obtain an agreement requiring the State to hold the Army harmless.

## **2-31. Environmental claims**

Claims for property damage, personal injury, or death based on contamination by toxic substances found in the air or the ground must be coordinated with the Environmental Law Division of the Army Litigation Center and the Environmental Torts Branch of DOJ. Claims for personal injury from contamination frequently arise at an area that is the subject of claims for cleanup of the contamination site. The cleanup claims involve other Army agencies, use of separate funds, and prolonged investigation. Administrative settlement is not usually feasible because settlement of personal injury claims must cover all damages, including property damage.

## **2-32. Related remedies**

An ACO or a CPO routinely receives claims or inquiries about claims that clearly are not cognizable under this regulation. It is the DA's policy that every effort be made to discover another remedy and inform the inquirer as to its nature. Claims personnel will familiarize themselves with the remedies set forth in DA Pam 27-162, paragraph 2-32, to carry out this policy. If no appropriate remedy can be discovered, forward the file to the Commander, USARCS, with recommendations.

# **Section IV Investigative Methods and Techniques**

## **2-33. Importance of the claims investigation**

Prompt and thorough investigation will be conducted on all potential and actual claims against the Government. Evidence developed during an investigation provides the basis for every subsequent step in the administrative settlement of a claim or in the defense of a lawsuit. Claims personnel must gather and record adverse as well as favorable information. The CJA, claims attorney or unit claims officer must preserve their legal and factual findings.

## **2-34. Elements of the investigation**

a. The investigation is conducted to ascertain the facts of an incident. Which facts are relevant often will depend on the law and regulations applicable to the conduct of the parties involved but, generally, the investigation should develop definitive answers to such questions as "When?" "Where?" "Who?" "What?" and "How?" Typically, the time, place, persons, and circumstances involved in an incident may be established by a simple report, but its cause and the resulting damage may require extensive effort to obtain all the pertinent facts.

b. The object of the investigation is to gather, with the least possible delay, the best available evidence without accumulating excessive evidence concerning any particular fact. The claimant is

often an excellent source of such information and should be contacted early in the investigation.

c. The elements common to most investigations are detailed in DA Pam 27-162, paragraphs 2-34 and 2-35.

## **2-35. Conducting the investigation**

a. A properly filed claim must contain enough information to permit investigation. For example, if the claim does not specify the date, location or details of every incident complained of, the claimant or legal representative should be required to furnish the information.

b. Request the claimant or legal representative to specify a theory of liability. However, the investigation should not be limited to the theories specified, particularly where the claimant is unrepresented. All logical theories should be investigated.

c. The methods and techniques for investigating specific categories of claims are set forth in DA Pam 27-162, paragraphs 2-37 through 2-63. The investigation of medical malpractice claims should be conducted by a CJA or claims attorney, using a medical claims investigator.

## **2-36. Consultants and appraisers**

a. ACOs or CPOs will budget operation and maintenance (O&M) funds for the costs of hiring property appraisers, expert consultants to furnish opinions, and medical specialists to conduct independent medical examinations (IME). Where the cost exceeds \$750 or local funds are exhausted, a request for funding should be directed to the Commander, USARCS, with appropriate justification.

b. Where the claim arises from treatment at an Army MTF, the MEDDAC commander should be requested to fund the cost of an independent consultant's opinion or an IME.

c. The use of outside consultants and appraisers should be limited to claims in which liability or damages cannot be determined otherwise and in which the use of such sources is economically feasible, for instance, where property damage is high in amount and not determinable by a Government appraiser or where the extent of personal injury is serious and a Government IME is neither available nor acceptable to a claimant. Authority exists to examine a claimant at an MTF under AR 40-3, but prior to such an examination, ensure that the necessary specialists are available and a prompt written report may be obtained.

d. Either an IME or an expert opinion is procured by means of a personal services contract under the Federal Acquisition Regulation (FAR), Part 37, 48 CFR 37.000 et seq., through the local contracting office. The contract must be in effect prior to commencement of the records review. Payment is authorized only upon receipt of a written report responsive to the questions asked by the CJA or claims attorney. The circumstances and methods of obtaining a report are discussed in DA Pam 27-162, paragraph 2-36.

## **2-37. Claims memorandum of opinion**

Upon completion of the investigation, the ACO or CPO will prepare a memorandum of opinion in the format prescribed at DA Pam 27-162, paragraph 2-64, when a claim is forwarded to USARCS for action. This requirement can be waived by the USARCS AAO.

## **Section V**

### **Determination of Liability**

## **2-38. General**

a. Under the FTCA, the United States is liable in the same manner and to the same extent as a private individual under like circumstances in accordance with the law of the place where the act or omission giving rise to the tort occurred (28 USC 2673 and 2674). This means that liability must rest on the existence of a tort cognizable under State law, hereinafter referred to as a State tort. A finding of State tort liability requires the litigating attorney to prove the elements of duty, breach of duty, causation, and damages as interpreted by Federal case law.

b. The foregoing principles and requirements will be followed in

regard to tort claims against the United States under other chapters, with certain exceptions noted within the individual chapters or particular tort statutes.

c. Interpretation will be made in accordance with FTCA case law and also maritime case law where applicable. Additionally, a non-combat activity can furnish the basis for a claim under chapters 3, 6 and 10.

d. Federal, not State or local, law applies to a determination as to who is a Federal employee or a member of the Armed Forces. Under all chapters, the designation "Federal employee" excludes a contractor of the United States. See 28 USC 2671. Apply FTCA case law in making a determination.

e. Federal, not State or local, law applies to an interpretation of the SOL under all chapters. Minority or incompetence does not toll the SOL. Case law developed under the FTCA will be used in interpreting SOL questions.

## **2-39. Threshold exclusions**

The exclusions to liability set forth below are also discussed in DA Pam 27-162, paragraph 2-66.

a. A claim for violation of the Federal Constitution does not constitute a State tort and is not cognizable under any chapter. A Constitutional claim will be scrutinized in order to determine whether it is totally or partially payable as a State tort. For example, a Fifth Amendment taking may be payable in an altered form as a real estate claim. See paragraph 2-28.

b. A member of the Armed Forces' claim arising incident to service is not payable under any chapter; however, a claim for property loss or damage may be payable under chapter 11 or, if not, under chapters 3 or 6. Derivative claims and claims for indemnity are also excluded.

c. A Federal employee's personal injury or wrongful death claim payable under the Federal Employees Compensation Act (FECA) or the Longshore and Harbor Workers Compensation Act (LSHWCA) is not payable under any chapter. Derivative claims are also excluded but a claim for indemnity may be payable under certain circumstances. A Federal employee's claim for an incident-to-service property loss or damage may be payable under chapter 11 or, if not, under chapters 3, 4, 6, 8 or 10.

d. The exclusions listed below are found at 28 USC 2680 and apply to chapters 3, 4, 6 and 8 except as noted therein, and not to chapters 5 or 10. A claim is not payable if it—

(1) Is based upon an act or omission of an employee of the U.S. Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation is valid. This exclusion does not apply to a noncombat activity claim.

(2) Is based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Government, whether or not the discretion is abused. This exclusion does not apply to a noncombat activity claim.

(3) Arises out of the loss, miscarriage, or negligent transmission of letters or postal matters. This exclusion is not applicable to registered or certified mail claims under Chapter 3. See paragraph 2-25b.

(4) Arises in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any customs or other law enforcement officer. See 28 USC 2680(c).

(5) Is cognizable under the Suits in Admiralty Act (46 USC 7802-752), the Public Vessels Act (46 USC 781-790), or the Admiralty Extension Act (46 USC 740). This exclusion does not apply to chapters 3, 6, 8, or 10.

(6) Arises out of an act or omission of any Federal employee in administering the provisions of the Trading with the Enemy Act, 50 USC App. 1-44.

(7) Is for damage caused by the imposition or establishment of a quarantine by the United States.

(8) Arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit or interference with contract rights, except for acts or omissions of investigative or law enforcement officers of the U.S.

Government with regard to assault, battery, false imprisonment, false arrest, abuse of process or malicious prosecution. This exclusion also does not apply to a health care provider as defined in 10 USC 1089 and paragraph 3-8 of this regulation, under the conditions listed therein, or to chapter 10 claims.

(9) Arises from the fiscal operations of the U.S. Department of Treasury or from the regulation of the monetary system.

(10) Arises out of the combatant activities of U.S. military or naval forces, or the Coast Guard during time of war.

(11) Arises in a foreign country. This exclusion does not apply to chapters 3, 5, 6, 8, or 10.

(12) Arises from the activities of the Tennessee Valley Authority.

(13) Arises from the activities of the Panama Canal Commission. See 28 USC 2680(n).

(14) Arises from the activities of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives.

*e. Other exclusions.* A claim is not payable if it—

(1) Is for personal injury or death of any contract employee for whom benefits are provided under any workers' compensation law, if the provisions of the workers' compensation insurance are retrospective and charge an allowable expense to a cost-type contract.

(2) Arises from damage caused by flood or flood waters associated with the construction or operation of a USACE flood control project, 33 USC 702(c).

(3) Is for damage to, or loss of, property of a State, commonwealth, territory, or the District of Columbia caused by ARNG personnel, engaged in training or duty under 32 USC 316, 502, 503, 504, or 505, who are assigned to a unit maintained by that State, commonwealth, territory, or the District of Columbia.

(4) Is for damage to, or loss of, property or for personal injury or death arising out of debris removal by a Federal agency or employee in carrying out the provisions of the Federal Disaster Relief Act, 42 USC 5173.

(5) Arises from activities that present a nonjusticiable political question.

(6) Arises from the administration of a vaccine unless the conditions listed in the National Vaccine Injury Compensation Program have been met, 42 USC 300aa-11 and 42 USC 300aa-21.

(7) Arises from inaccurate charting by the Defense Mapping Agency, 10 USC 2798.

## 2-40. Threshold issues

These jurisdictional issues are discussed in DA Pam 27-162, paragraph 2-67.

*a. Statute of limitations.* To be payable, a claim under any chapter must be filed no later than two years from the date of accrual as determined by Federal law. The accrual date is the date on which the claimant is aware of the injury and its cause. The claimant is not required to know of the negligent or wrongful nature of the act or omission giving rise to the claim. The date of filing is the date of receipt by the appropriate Federal agency, not the date of mailing.

*b. U.S. employee requirement.* To be payable, a claim under any chapter except chapter 12, section II, must be based on the acts or omissions of a member of the Armed Forces or a Federal civilian employee. This does not include a contractor of the United States. Apply Federal case law for interpretation.

*c. Scope of employment requirement.* To be payable, a claim must be based on acts or omissions of a member of the Armed Forces or a Federal employee acting within the scope or employment, except for chapters 5, 10, or 12, section II. A claim arising from noncombat activities must be based on the armed service's official activities.

## Section VI

### Determination of Damages

Refer to DA Pam 27-162, paragraphs 2-69 through 2-76, for coverage of all aspects of damages.

## 2-41. Applicable law

*a. The Federal Tort Claims Act.* The whole law of the place where the incident giving rise to the claim occurred, including choice of law rules, is applicable. Therefore, the law of the place of injury or death does not necessarily apply. Where there is a conflict between local law and an express provision of the FTCA, the latter governs.

*b. The Military Claims Act or National Guard Claims Act.* See chapters 3 and 6. The law set forth in paragraph 3-8 applies only to claims accruing on or after 1 September 1995. The law of the place of the incident giving rise to the claim will apply to claims arising in the United States, its commonwealths, territories and possessions prior to 1 September 1995. The general principles of U.S. tort law will apply to property damage or loss claims arising outside the United States prior to 1 September 1995. Established principles of general maritime law will apply to injury or death claims arising outside the United States prior to 1 September 1995. See *Moragne v. United States Lines, Inc.*, 398 U.S. 375 (1970) and Federal case law. Where general maritime law provides no guidance, the general principles of U.S. tort law will apply. Punitive or exemplary damages, including damages considered punitive in nature under 28 USC 2674, are not payable in MCA claims arising prior to 1 September 1997.

*c. The Foreign Claims Act.* See chapter 10 of this regulation. The law of the place of occurrence applies to the resolution of claims. However, the law of damages set forth in paragraph 3-5 will serve as a guide.

*d. The Army Maritime Claims Settlement Act.* Maritime law applies.

*e. Damages not payable.* Under all chapters, property loss or damage refers to actual tangible property. Accordingly, consequential damages, including, but not limited to bail, interest (prejudgment or otherwise), or court costs are not payable. Costs of preparing, filing, and pursuing a claim, including expert witness fees, are not payable. The payment of punitive damages, that is, damages in addition to general and special damages that are otherwise payable, is prohibited.

*f. Source of attorney's fees.* Attorney's fees are taken from the settlement amount and not added thereto. They may not exceed 20 percent of the settlement amount under any chapter.

## 2-42. Collateral source rule

Where permitted by applicable State or maritime law, damages recovered from collateral sources are payable under chapters 4 and 8, but not under chapters 3, 5, 6, and 10.

## 2-43. Subrogation

Subrogation is the substitution of one person in place of another with regard to a claim, demand or right. It should not be confused with a lien, which is an obligation of the claimant. Applicable State law should be researched to determine the distinction between subrogation and a lien. Subrogation claims are payable under chapters 4 and 8, but not under chapters 3, 5, 6, or 10.

## Section VII

### Evaluation

See discussion at DA Pam 27-162, paragraphs 2-77 through 2-80.

## 2-44. General rules and guidelines

*a. Before claims personnel evaluate a claim:*

(1) A claimant or claimant's legal representative will be furnished the opportunity to substantiate the claim by providing essential documentary evidence according to the claim's nature including, but not instead of, the following: medical records and reports, witness statements, itemized bills and paid receipts, estimates, Federal tax returns, W-2 forms or similar proof of loss of earnings, photographs, and reports of appraisals or investigation. If necessary, request, through the legal representative, permission to interview the claimant, the claimant's family, proposed witnesses and treating health care providers (HCP). In a professional negligence claim, the claimant will submit an expert opinion when requested.

(2) When the claimant or the legal representative fails to respond in a timely manner to informal demands for documentary evidence or interviews, make a written request. Such written request provides notice to the claimant that failure to provide substantiating evidence will result in an evaluation of the claim based only on information currently in the file. When, despite the Government's request, there is insufficient information in the file to permit evaluation, the claim will be denied for failure to document it.

(3) If, in exchange for complying with the Government's request for the foregoing information, the claimant or the legal representative requests similar information from the file, the claimant may be provided such information and documentation as is releasable under the Federal Rules of Civil Procedure (FRCP). Additionally, work product may be released if such release will help settle the claim.

b. An evaluation should be viewed from the claimant's perspective. In other words, before denying a claim, first determine whether there is any reasonable basis for compromise. Certain jurisdictional issues and statutory bases may not be open for compromise. The incident to service and Federal Employees Compensation Act exclusions are rarely subject to compromise, whereas the SOL is more subject to compromise. Factual and legal disputes are compromiseable, frequently providing a basis for limiting damages, not necessarily grounds for denial. Where a precise issue of dispute is identified and is otherwise unresolvable, mediation by a disinterested qualified person, such as a Federal judge, should be obtained upon agreement with the claimant or the claimant's legal representative. Contributory negligence has given way to comparative negligence in most United States jurisdictions. In most foreign countries, comparative negligence is the rule of law.

c. DA policy seeks to compromise claims in a manner that represents a fair and equitable result to both the claimant and the United States. This policy does not extend to frivolous claims or claims lacking factual or legal merit. A claim should not be settled solely to avoid further processing time and expense. All claims, regardless of amount, should be evaluated. Congress imposed no minimum limit on payable claims nor did it intend that small nonmeritorious claims be paid.

#### **2-45. Joint tortfeasors**

When joint tortfeasors are liable, it is DA policy to pay only the fair share of a claim attributable to the fault of the United States rather than pay the claim in full and then bring suit against the joint tortfeasor for contribution. If payment from a joint tortfeasor is not forthcoming after the CJA's demand, the United States should settle for its fair share, provided the claimant is willing to hold the United States harmless. Where a joint tortfeasor's liability greatly outweighs that of the United States, the claim should be referred to the joint tortfeasor for action. See paragraph 2-22 of this publication and DA Pam 27-162, paragraph 2-79.

#### **2-46. Structured settlements**

a. Under chapter 4, future periodic payments of damages, including grants or trusts, are not mandatory but they are encouraged. Under other chapters, the Commander, USARCS, may require such a mode of settlement when—

(1) It is necessary to ensure adequate care and compensation for a minor or other incompetent claimant or unemployed survivor over a period of years.

(2) A medical trust is necessary to ensure the long-term availability of funds for anticipated future medical care, the cost of which is difficult to predict.

(3) The injured party's life expectancy cannot be reasonably determined or is likely to be shortened.

b. It is the policy of the Department of Justice never to discuss the tax-free nature of a structured settlement.

### **Section VIII Negotiations**

#### **2-47. Purpose and extent**

It is DA policy to settle meritorious claims promptly and fairly through direct negotiation at the lowest possible level. The Army's negotiator should not admit liability as such is not necessary. However, the settlement should reflect diminished value where contributory negligence or other value-diminishing factors exist. The negotiator should be thoroughly familiar with all aspects of the case, including the claimant's background, the key witnesses, the anticipated testimony and the appearance of the scene, if any. There is no substitute for the claims negotiator's personal study of, and participation in, the case before settlement negotiations begin.

#### **2-48. Who should negotiate**

An AAO or, when delegated additional authority, an ACO or a CPO, has authority to settle claims in an amount exceeding the monetary authority delegated by regulation. It is DA policy to delegate USARCS authority, on a case-by-case basis, to an ACO or a CPO possessing the appropriate ability and experience. Only an attorney should negotiate with a claimant's attorney. Negotiations with unrepresented claimants may be conducted by a nonattorney.

#### **2-49. What should be compromised**

Practically any claim, regardless of amount, may be subject to compromise through direct negotiation. A CJA or claims attorney should develop expertise in assessing liability and damages, including small property damage claims.

#### **2-50. How to negotiate**

Claims within USARCS' monetary authority should be negotiated in person, at least initially. If telephonic negotiations are conducted, they should be memorialized with a written record furnished to the claimant. Avoid using correspondence as the sole means of communicating an offer. However, when corresponding, break down any offer by elements of recoverable damage and explain any diminished evaluation due to contributory negligence or other value-diminishing factors. An offer should not be increased in the absence of a reasonable counter-offer. At the commencement of negotiations, ensure that the claimant's attorney has obtained authority from the claimant to settle and that any offer made will be passed on to the claimant.

#### **2-51. Settlement negotiations with unrepresented claimants**

All aspects of the applicable law and procedure, except the amount to be claimed, should be explained to both potential and actual claimants. The negotiator will ensure that the claimant is aware of whether the negotiator is an attorney or a nonattorney, and that the negotiator represents the United States. As to claims within USARCS' monetary authority, the chronology and details of negotiations should be memorialized with a written record furnished to the claimant. The claimant should understand that it is not necessary to hire an attorney, but when an attorney is needed, the negotiator should recommend hiring one.

### **Section IX Settlement Procedures**

#### **2-52. Settlement or approval authority**

"Settlement authority" means the authority to approve, deny or make a final offer on a claim, subject to any limitations set forth in the chapter under which settlement is made. Either a final offer or a denial constitutes final action. "Approval authority" means the authority to pay a claim in full or in part, provided the claimant agrees. Each chapter of this regulation contains a paragraph delegating settlement and approval authority. DA Pam 27-162, paragraph 2-85, outlines how various offices use delegated authority.

## 2-53. Splitting property damage and personal injury claims

When both property damage and personal injury arise from the same incident, the property damage claim may be paid to either the claimant or, under chapters 4 or 8, the insurer and the same claimant may receive a subsequent payment for personal injury. Only under chapters 4 or 8 may the insurer receive subsequent payment for subrogated medical bills and lost earnings when the personal injury claim is settled. The primary purpose of settling an injured claimant's property damage claim before settling the personal injury claim is to pay the claimant for vehicle damage expeditiously and avoid costs associated with delay such as loss of use, loss of business, or storage charges. The Commander, USARCS' approval must be obtained whenever the estimated value of any one claim exceeds \$25,000, or the value of all claims, actual or potential, arising from the incident exceeds \$50,000. See DA Pam 27-162, paragraph 2-90.

## 2-54. Advance payments

a. This paragraph implements 10 USC 2736 (Act of 8 September 1961 (75 Stat. 488) as amended by PL 90-521 (82 Stat. 874); PL 98-564 (90 Stat. 2919); and PL 100-465 (102 Stat. 2005)). No new liability is created by 10 USC 2736, which merely permits partial advance payments on claims not yet filed. See paragraph 11-18 for information on emergency partial payments in personnel claims, which are not governed by 10 USC 2736.

b. An advance payment, not exceeding \$100,000, is authorized in the limited category of claims or potential claims considered meritorious under chapters 3, 6, or 10, that result in immediate hardship. An advance payment is authorized only under the following circumstances:

(1) The claim, or potential claim, must be determined to be cognizable and meritorious under the provisions of chapters 3, 6, or 10.

(2) An immediate need for food, clothing, shelter, medical or burial expenses, other necessities, or other resources exists.

(3) The payee, so far as can be determined, would be a proper claimant, including an incapacitated claimant's spouse or next-of-kin.

(4) The total damage sustained must exceed the amount of the advance payment.

(5) A properly executed advance payment acceptance agreement has been obtained. This acceptance agreement must state that it does not constitute an admission of liability by the United States and that the amount paid shall be deducted from any subsequent award.

c. There is no statutory authority for making advance payments for claims payable under chapters 4 or 8.

## 2-55. Actions

a. When required.

(1) All claims will be acted on prior to being closed except for those that are transferred. For claims on which suit is filed before final action, see paragraph 2-59. A settlement authority may deny or pay in full or in part any claim in a stated amount within his or her delegated authority. An approval authority may pay in full or in part, but may not deny, a claim in a stated amount within his or her delegated authority. If any one claim arising out of the same incident exceeds a settlement or approval authority's monetary jurisdiction, all claims from that incident will be forwarded to the authority having jurisdiction. Appropriate action will be recommended in the claims memorandum of opinion. See paragraph 2-37.

(2) An action memorandum is required for all final actions regardless of whether payment is made electronically. The memorandum will contain a sufficient rendition of the facts, law or damages to justify the action being taken. See DA Pam 27-162, paragraph 2-89, for a model action.

b. Claim brought by a claims authority or superior. A claim filed by an approval or settlement authority or his or her superior officer in the chain of command or a family member of either will be

investigated and forwarded for final action, without recommendation, to the next higher settlement authority (in an overseas area, this includes a command claims service) or to USARCS.

## 2-56. Settlement agreements

a. When required.

(1) A claimant's acceptance of an award constitutes full and final settlement and release of any and all claims against the United States and its employees, except as to payments made under paragraphs 2-53 and 2-54. A settlement agreement is required prior to payment on all tort claims, whether the claim is paid in full or in part.

(2) DA Form 1666 (Claims Settlement Agreement) may be used for payment of USACE claims of \$2500 or less or all Army Central Insurance Fund and Army Air Force Exchange Service claims.

(3) A payment report (see DA Pam 27-162, figure 2-58) will be used for all payments from the Defense Finance and Accounting Service (DFAS), for example, FTCA claims of \$2500 or less, FCA claims of \$100,000 or less and all maritime claims regardless of amount.

(4) A payment voucher (see DA Pam 27-162, figures 2-59a and b) will be used for all payments from the Judgment Fund, for example, FTCA claims exceeding \$2,500, MCA and FCA claims exceeding \$100,000.

(5) An alternative settlement agreement will be used when the claimant is represented by an attorney, or when any of the above settlement agreement forms are legally insufficient (such as when multiple interests are present, a hold harmless agreement is reached, or there is a structured settlement). See DA Pam 27-162, paragraph 2-93, for model agreements.

b. Claims involving minors.

(1) Generally, only a court-appointed guardian of a minor's estate, or a person performing a similar function under court supervision, may execute a binding settlement agreement on a minor's claim. In the United States, the law of the State where the minor resides or is domiciled will determine the nature and type of court approval that is needed, if any.

(2) For claims arising in foreign countries where the amount agreed upon does not exceed \$2,500, the requirement to obtain a guardian may be eliminated. For settlements over \$2,500, whether or not the claim arose in the United States, refer to applicable local law, including the law of the foreign country where the minor resides.

c. Claims involving incompetents. The principles stated above may also be applied in appropriate cases involving incompetents. If it is believed that the foregoing requirements are materially impeding settlement of the claim, bring the matter to the attention of the Commander, USARCS, for appropriate resolution.

d. Claims involving workers' compensation carriers. The settlement of a claim involving a claimant who has elected to receive workers' compensation benefits under local law may require the consent of the workers' compensation insurance carrier, and in certain jurisdictions, the State agency that has authority over workers' compensation awards. Accordingly, claims approval and settlement authorities should be aware of local requirements.

## 2-57. Notice of a final offer

a. When claims personnel believe that a claim should be compromised, and after every reasonable effort has been made to settle at less than the amount claimed, a settlement authority will make a written final offer within his or her monetary jurisdiction or forward the claim to the authority having sufficient monetary jurisdiction, recommending a final offer.

b. A final offer under chapter 4 will notify the claimant of the right to sue, not later than six months from the notice's date of mailing, and of the right to request reconsideration. The procedures for processing a request for reconsideration are set forth in paragraph 4-7.

c. Under chapters 3 or 6, the notice will contain an appeal paragraph. A similar procedure will be followed in chapters 5 and 8. Chapter 10 sets forth its own procedures for FCA final offers. The

forms for such notices are found at DA Pam 27-162, paragraph 2-94. The final offer notice will contain sufficient detail to outline each element of damages as well as discuss contributory negligence, the SOL or other reasons justifying a compromise offer. The procedures for processing an appeal are set forth in paragraph 3-7 of this publication. The letter must inform claimants of the following:

- (1) They must accept the offer or appeal as provided.
- (2) The identity of the official who will act on the appeal, and the requirement that the appeal will be addressed to the settlement authority who last acted on the claim.
- (3) No form is prescribed for the appeal, but the notice of appeal must fully set forth the grounds for appeal or state that it is based on the record as it exists at the time of denial or final offer.

(4) The appeal must be postmarked not later than 60 days after the date of mailing of the final notice of action. If the last day of the appeal period falls on a Saturday, Sunday, or legal holiday, as specified in Rule 6a of the FRCP, the following day will be considered the final day of the appeal period.

d. Where a claim for the same injury falls under both chapters 3 and 4, and the denial or final offer applies equally to each such claim, the letter of notification must advise the claimant that any suit brought on any portion of the claim filed under the FTCA must be brought not later than six months from the date of mailing of the notice of final offer and any appeal under chapter 3 must be made as stated in subparagraph *c* above. Further, the claimant must be advised that, if suit is brought, action on any appeal under chapter 3 will be held in abeyance pending final determination of such suit.

## **2-58. Notice of a denial**

See paragraph 2-44a on denying a claim for failure to substantiate.

a. Where there is no reasonable basis for compromise, a settlement authority will deny a claim within his or her monetary jurisdiction or forward the claim recommending denial to the settlement authority who has jurisdiction. The denial notice will contain instructions on how to sue, request reconsideration or appeal as stated in paragraph 2-57. The notice will state the basis for denial. Forms for such notices are set forth in DA Pam 27-162, paragraph 2-95. No admission of liability will be made. A notice to an unrepresented claimant should detail the basis for denial in lay language sufficient to permit an informed decision as to whether to request appeal or reconsideration. Where indicated, a denial notice should be accompanied by copies of documents, such as witness statements or reports on which the denial is based.

b. Regardless of the claim's nature or the statute under which it may be considered, letters denying claims on jurisdictional grounds that are valid, certain, and not easily overcome (and for this reason no detailed investigation as to the merits of the claim was conducted), must state that denial on such grounds is not to be construed as an opinion on the merits of the claim or an admission of liability. If sufficient factual information exists to make a tentative ruling on the merits of the claim, liability may be expressly denied.

## **2-59. Notice of a Parker denial**

When suit is filed before final action is taken on a chapter 4 claim, a denial letter will be issued only upon request of DOJ or the trial attorney. For a model notice, see DA Pam 27-162, paragraph 2-96. If suit is filed prematurely or in error, the claimant may be requested to withdraw the suit without prejudice. Such a request must be coordinated with the trial attorney.

## **2-60. Mailing procedures**

Both final offer and denial notices are time-sensitive as they require a claimant to take additional action within certain time limits. Accordingly, follow procedures to ensure that the date of mailing and receipt of a request for reconsideration are documented. Use certified mail with return receipt requested to mail such notices. Upon receipt, an appeal or request for reconsideration will be date-time stamped, logged in, and acknowledged as set forth below.

## **2-61. Appeal or reconsideration**

a. An appeal or a request for reconsideration will be acknowledged in writing. Under chapter 4, a request for reconsideration invokes the six-month period during which suit cannot be filed, 28 CFR 14.9(b). The acknowledgment letter will underscore this restriction.

b. Where the contents of the appeal or request for reconsideration indicate, additional investigation will be conducted and the original action changed if warranted. If the relief requested is not warranted, the settlement authority will forward the claim to a higher settlement authority with a claims memorandum of opinion stating the reasons why the request is invalid. See paragraph 2-37 of this publication.

## **2-62. Retention of file**

After final action has been taken, the settlement authority will retain the file until at least one month after either the period of filing suit or the appeal has expired and until all data has been entered into the database. A paid claim file will be retained until final action has been taken on all other claims arising out of the same incident. If any single claim arising out of the same incident must be forwarded to higher authority for final action, all claims files for that incident will be forwarded at the same time.

## **Section X Payment Procedures**

### **2-63. Sources of funds**

a. To determine whether to pay a claim from Army or USACE funds or the Judgment Fund, a separate amount must be stated on each claimant's settlement agreement. A joint amount is not acceptable. A claim for injury to a spouse or a child is a separate claim from one for loss of consortium or services by a spouse or parent. The monetary limits of \$2,500 set forth in chapter 4 and \$100,000 set forth in chapters 3, 6, and 10, apply to each separate claim.

b. A chapter 4, 5, or 7, section II, claim for \$2,500 or less is paid from Army funds or, if arising from civil works, from USACE funds. The Department of Treasury pays any settlement exceeding \$2,500 in its entirety, from the Judgment Fund. However, if a chapter 7, section II, claim is treated as a noncombat activity claim, payment is made as set forth in subparagraph *c* below.

c. The first \$100,000 of a claim settled under chapters 3, 6, or 10, is paid from Army funds. Any amount over \$100,000 is paid out of the Judgment Fund.

d. If not over \$500,000, a claim arising under chapter 8 is paid from Army or civil works funds as appropriate. A claim exceeding \$500,000 is paid entirely by a deficiency appropriation.

e. AAFES or NAFI claims are paid from nonappropriated funds, except when such claims are subject to apportionment between appropriated and nonappropriated funds. See DA Pam 27-162, subparagraph 2-100i(2).

### **2-64. Finality of settlement**

A claimant's acceptance of an award, except for advance payment or a split payment for property damage only, constitutes a release of the United States and its employees from all liability. Where applicable, a release should specify the ARNG.

## **Chapter 3 Military Claims Act**

### **3-1. Statutory authority**

The statutory authority for this chapter is contained in the Act of 10 August 1956 (70A Stat. 153, 10 USC 2733), commonly referred to as the Military Claims Act (MCA), as amended by PL 90-522, 26 September 1968 (82 Stat. 875); PL 90-525, 26 September 1968 (82 Stat. 877); PL 93-336, 8 July 1974 (88 Stat. 291); PL 90-521, 26 September 1968 (82 Stat. 874); PL 98-564, 30 October 1984; PL

### 3-2. Scope

a. The guidance set forth in this chapter applies worldwide and prescribes the substantive bases and special procedural requirements for the settlement of claims against the United States for death or personal injury, or damage to, or loss or destruction of, property:

(1) Caused by military personnel or civilian employees (enumerated in para 2-2c(4)) acting within the scope of their employment, except for non-Federalized Army National Guard soldiers as explained in Chapter 6; or

(2) Incident to the noncombat activities of the armed services (see Glossary).

b. A tort claim arising in the United States, its commonwealths, territories, and possessions may be settled under this chapter only if a court of competent jurisdiction has determined that the Federal Tort Claims Act (FTCA) does not apply to the type of claim under consideration or if the claim arose incident to noncombat activities.

c. A tort claim arising in a foreign country may be settled under this chapter only if the claimant has been determined to be an inhabitant (normally a resident) of the United States at the time of the incident giving rise to the claim. See subparagraph 10-2b.

### 3-3. Claims payable

a. *General.* Unless otherwise prescribed, a claim for personal injury, death, or damage to, or loss or destruction of, property is payable under this chapter when—

(1) Caused by an act or omission of military personnel or civilian employees of the DA or DOD, acting within the scope of their employment, that is determined to be negligent or wrongful; or

(2) Incident to the noncombat activities of the armed services.

b. *Property.* Property that may be the subject of claims for loss or damage under this chapter includes—

(1) Real property used and occupied under lease (express, implied, or otherwise).

(2) Personal property bailed to the Government under an agreement (express or implied) unless the owner has expressly assumed the risk of damage or loss.

(3) Registered or insured mail in the DA's possession, even though the loss was caused by a criminal act.

(4) Property of a member of the Armed Forces that is damaged or lost incident to service, if such a claim is not payable as a personnel claim under 31 USC 3721.

c. *Maritime claims.* Payment for claims that arise on the high seas or within the territorial waters of a foreign country needs advance approval of the Commander, USARCS.

### 3-4. Claims not payable

a. A claim is not payable if it—

(1) Results wholly from the claimant's or agent's negligent or wrongful act. (See subpara 3-5a(1)(a) on contributory negligence).

(2) Arises from private or domestic obligations rather than from Government transactions.

(3) Is based solely on compassionate grounds.

(4) Is for any item, the acquisition, possession, or transportation of which was in violation of DA directives, such as illegal war trophies.

(5) Is for rent, damage, or other payments involving the acquisition, use, possession or disposition of real property or interests therein by and for the DA or DOD, except as authorized by subparagraph 3-3d(1).

(6) Is not in the best interests of the United States, is contrary to public policy, or is otherwise contrary to the basic intent of the governing statute (10 USC 2733); for example, claims for property damage or loss or personal injury or death of inhabitants of unfriendly foreign countries or individuals considered to be unfriendly to the United States. When a claim is considered not payable for the reasons stated in this paragraph, it will be forwarded for appropriate

action to the Commander, USARCS, with the recommendations of the responsible claims office.

(7) Is presented by a national, or a corporation controlled by a national, of a country at war or engaged in armed conflict with the United States, or any country allied with such enemy country unless the appropriate settlement authority determines that the claimant is and, at the time of the incident, was friendly to the United States. A prisoner of war or an interned enemy alien is not excluded from bringing an otherwise payable claim for damage, loss, or destruction of personal property in the custody of the Government.

(8) Is a claim for damages or injury, which a receiving State should adjudicate and pay under an international agreement, unless a consistent and widespread alternative process of adjudicating and paying such claims has been established within the receiving State. This exclusion is subject to waiver by the Commander, USARCS. See DA Pam 27-162, subparagraph 3-4a, for further discussion of the conditions of waiver.

(9) Is one of the claims listed in paragraph 2-39 of this publication, except for the exclusion listed in subparagraph 2-39d(11). Additionally, the exclusions in subparagraph 2-39d(1), (2), (5), and (11) do not apply to a claim arising incident to noncombat activities.

(10) Is based on strict or absolute liability and similar theories.

(11) Is payable under chapters 4, 10, or 11.

(12) The involved DA vehicle is covered by insurance in accordance with requirements of a foreign country unless coverage is exceeded or the insurer is bankrupt.

b. When an award is otherwise payable and an insurance settlement is not reasonably available, a field claims office should request permission from the Commander, USARCS, to pay the award, provided that an assignment of benefits is obtained.

### 3-5. Applicable law

a. *General principles.*

(1) *Tort claims excluding claims arising out of noncombat activities.*

(a) In determining liability, such claims will be evaluated under general principles of law applicable to a private individual in the majority of American jurisdictions, except where the doctrine of contributory negligence applies. If the claim accrued prior to 1 September 1995, and the incident giving rise to the claim occurred in the United States, its commonwealths, territories or possessions, the law of the place of occurrence applies. The MCA requires that contributory negligence be interpreted and applied according to the law of the place of the occurrence, including foreign (local) law for claims arising in foreign countries (see 10 USC 2733(b)(4)).

(b) Claims are cognizable when based on those acts or omissions recognized as tortious by a majority of jurisdictions that require proof of duty, negligence, and proximate cause resulting in compensable injury or loss subject to the exclusions set forth at paragraph 3-4. Strict or absolute liability and similar theories are not grounds for liability under this chapter.

(2) *Tort claims arising out of noncombat activities.* Claims arising out of noncombat activities under subparagraph 3-3a(2) and 3-3b are not tort claims and require only proof of causation. However, the doctrine of contributory negligence will apply, to the extent set forth in 10 USC 2733(b)(4) and subparagraph (1)(a) above.

(3) *Principles applicable to all chapter 3 claims.*

(a) Interpretation of meanings and construction of questions of law under the MCA will be determined in accordance with Federal law. The formulation of binding interpretations is delegated to the Commander, USARCS, provided that the statutory provisions of the MCA are followed.

(b) Scope of employment will be determined in accordance with Federal law. Follow guidance from reported FTCA cases. The formulation of a binding interpretation is delegated to the Commander, USARCS, provided the statutory provisions of the MCA are followed.

(c) The collateral source doctrine does not apply to claims accruing on or after 1 September 1995. Otherwise, the law of the place in which the incident giving rise to the claim will apply to claims accruing prior to 1 September 1995.



(d) Joint and several liability with other tortfeasors does not apply to claims accruing on or after 1 September 1995. Joint and several liability applies only to claims accruing prior to 1 September 1995 if the incident giving rise to the claim arose in the United States, its commonwealths, territories or possessions; otherwise the principles of general maritime law apply. The United States will be liable only for the portion of loss or damage attributable to the fault of the United States or its employees.

(e) No allowance will be made for court costs, bail, interest, inconvenience or expenses incurred in connection with the preparation and presentation of the claim.

(f) Punitive or exemplary damages are not payable.

(g) Claims for emotional distress in the absence of impact will be entertained only from members of the injured person's immediate family, provided that such claimants were in the zone of danger and exhibited physical manifestation of their emotional distress as to claims accruing on or after 1 September 1995. If the claim accrued prior to 1 September 1995 and the incident giving rise to the claim occurred in the United States, its commonwealths, territories or possessions, the law of the place of occurrence applies. Otherwise, the principles of general maritime law apply.

(h) In a claim for personal injury or wrongful death, the total award for noneconomic damages to any direct victim and all persons who claim injury by or through that victim will not exceed \$500,000 as to claims accruing on or after 1 September 1995. If the claim accrued prior to 1 September 1995, this limitation does not apply. Any such limitation in the law of the place of occurrence will apply.

b. *Personal injury claims.* The following provisions apply to claims accruing on or after 1 September 1995. Otherwise, the law of the place of the incident giving rise to the claim will apply to claims arising in the United States, its commonwealths, territories or possessions. General maritime law will apply to claims arising outside the United States.

(1) *Eligible claimants.* Only the following may claim:

(a) Persons who suffer physical injuries but not subrogees (when claiming property loss or damage, medical expenses or lost earnings). See subparagraph *a(3)(c)* above.

(b) Spouses for loss of consortium, but not parent-child or child-parent loss of consortium;

(c) Members of the immediate family who were in the zone of danger. See subparagraph *a(3)(g)* above.

(2) *Economic damages.* Elements of economic damage are limited to the following:

(a) Past expenses, including medical, hospital and related expenses actually incurred. Nursing and similar services furnished gratuitously by a family member are compensable. Itemized bills or other suitable proof must be furnished. Expenses paid by, or recoverable from, insurance or other sources are not recoverable.

(b) Future medical, hospital, and related expenses. When requested, a medical examination is required.

(c) Past lost earnings as substantiated by documentation from both the employer and a physician.

(d) Loss of earning capacity as substantiated by acceptable medical proof. When requested, past Federal income tax forms must be submitted for the previous five years and the injured person must undergo an independent medical examination (IME). Estimates of future losses must be discounted to present value at a discount rate of one to three percent after deducting for income taxes. When a medical trust providing for all future care is established, personal consumption may be deducted from future losses.

(e) Compensation paid to a person for essential household services that the injured person can no longer provide for himself or herself. These costs are recoverable only to the extent that they neither have been paid by, nor are recoverable from, insurance.

(3) *Noneconomic damages.* Elements of noneconomic damages are limited to the following:

(a) *Past and future conscious pain and suffering.* This element is defined as physical discomfort and distress as well as mental and emotional trauma. Loss of enjoyment of life, whether or not it is

discernible by the injured party, is compensable. The inability to perform daily activities that one performed prior to injury, such as recreational activities, is included in this element. Supportive medical records and statements by health care personnel and acquaintances are required. When requested, the claimant must submit to an interview.

(b) *Emotional distress.* Emotional distress under the conditions set forth in subparagraph *a(3)(g)* above.

(c) *Physical disfigurement.* This element is defined as impairment resulting from an injury to a person that causes diminishment of beauty or symmetry of appearance rendering the person unsightly, misshapen, imperfect, or deformed. A medical statement and photographs, documenting claimant's condition, may be required.

(d) *Loss of consortium.* This element is defined as conjugal fellowship of husband and wife and the right of each to the company, society, cooperation, and affection of the other in every conjugal relation.

c. *Wrongful death claims.* The following provisions apply to claims accruing on or after 1 September 1995. Otherwise, the law of the place of the incident giving rise to the claim will apply to claims arising in the United States, its commonwealths, territories or possessions. General maritime law will apply to claims arising outside the United States.

(1) *Claimant.*

(a) Only one claim may be presented for a wrongful death. It shall be presented by the decedent's personal representative on behalf of all parties in interest. The personal representative must be appointed by a court of competent jurisdiction prior to any settlement and must agree to make distribution to the parties in interest under court jurisdiction, if required.

(b) Parties in interest are the surviving spouse, children, or dependent parents to the exclusion of all other parties. If there is no surviving spouse, children, or dependent parents, the next of kin will be considered a party or parties in interest. A dependent parent is one who meets the criteria set forth by the Internal Revenue Service to establish eligibility for a DOD identification card.

(2) *Economic loss.* Elements of economic damages are limited to the following:

(a) Loss of monetary support of a family member from the date of injury causing death until expiration of decedent's worklife expectancy. When requested, the previous five years Federal income tax forms must be submitted. Estimates must be discounted to present value at one to three percent after deducting for taxes and personal consumption. Loss of retirement benefits are compensable and similarly discounted after deductions.

(b) Loss of ascertainable contributions, such as money or gifts to other than family member claimants as substantiated by documentation or statements from those concerned.

(c) Loss of services from date of injury to end of life expectancy of the decedent or the person reasonably expected to receive such services, whichever is shorter.

(d) Expenses as set forth in subparagraph *b(2)(a)* above. In addition, burial expenses are allowable. Expenses paid by, or recoverable from, insurance or other sources are not recoverable.

(3) *Noneconomic loss.* Elements of damages are limited to the following:

(a) Predeath conscious pain and suffering.

(b) Loss of companionship, comfort, society, protection, and consortium suffered by a spouse for the death of a spouse, a child for the death of a parent, or a parent for the death of a child.

(c) Loss of training, guidance, education, and nurture suffered by a child under the age of 18 for the death of a parent, until the child becomes 18 years old.

(d) Emotional distress under the conditions set forth in subparagraph *a(3)(g)* above. Claims for the survivors' emotional distress, mental anguish, grief, bereavement, and anxiety are otherwise not payable.

d. *Property damage claims.* The following provisions apply to all claims except for claims accruing prior to 1 September 1995 and

arising in the United States, its commonwealths, territories and possessions, as to which the law of the place of the incident giving rise to the claim will apply.

(1) Such claims are limited to damage to, or loss of, tangible property and costs directly related thereto. Consequential damages are not included. (See DA Pam 27-162, para 2-77.)

(2) Proper claimants are described in paragraph 2-10. Claims for subrogation are excluded. (See para 2-10e.) However, there is no requirement that the claimant use personal casualty insurance to mitigate the loss.

(3) Allowable elements of damage and measure of proof (additions to these elements are permissible with concurrence of the Commander, USARCS). These elements are discussed in detail in DA Pam 27-162, paragraph 2-77.

(a) Damages to personal property.

(b) Loss of personal property, or personal property that is not economically repairable.

(c) Loss of use.

(d) Towing and storage charges.

(e) Loss of business or profits.

(f) Overhead.

### 3-6. Settlement Authority

a. *Authority of the Secretary of the Army.* The Secretary of the Army, the Army General Counsel, as the Secretary's designee, or another designee of the Secretary of the Army may approve settlements in excess of \$100,000.

b. *Delegations of Authority.*

(1) Denials and final offers made under the delegations set forth herein are subject to appeal to the authorities specified in subparagraph *d* below.

(2) The TJAG and TAJAG are delegated authority to pay up to \$100,000 in settlement of a claim and to disapprove a claim regardless of the amount claimed.

(3) The Commander, USARCS, or his or her designees are delegated authority to pay up to \$25,000 in settlement of a claim and to disapprove or make a final offer in a claim regardless of the amount claimed.

(4) Unless the Commander, USARCS, alters the delegation, the JA or SJA and, subject to limitations that person may impose, chiefs of a command claims service are delegated authority to pay up to \$25,000 in settlement, regardless of the amount claimed, and to disapprove or make a final offer in a claim presented in an amount not exceeding \$25,000. The authority to pay claims may be delegated to a CJA or claims attorney.

(5) Unless the Commander, USARCS, alters the delegation, heads of ACOs are delegated authority to pay up to \$25,000 in settlement of a claim, regardless of the amount claimed, and to disapprove or make a final offer in a claim presented in an amount not exceeding \$25,000. The authority to pay claims may be delegated to a CJA or claims attorney.

(6) Unless the Commander, USARCS, alters the delegation, heads of CPOs with approval authority or their designated CJAs or claims attorneys are delegated authority to approve, in full or in part, claims presented for \$5,000 or less, and to pay claims regardless of the amount claimed, provided an award of \$5,000 or less is accepted in full satisfaction of the claim.

c. *Settlement of multiple claims arising from a single incident.*

(1) Where a single act or incident gives rise to multiple claims cognizable under this chapter, and where one or more of these claims apparently cannot be settled within the monetary jurisdiction of the authority initially acting on them, no final offer will be made. All claims will be forwarded, along with a recommended disposition, to the authority who has monetary jurisdiction over the largest claim for a determination of liability.

(2) If such authority determines that Federal liability is established, he or she may return claims of lesser value to the field claims office for settlement within that office's jurisdiction. The field claims office must take care to avoid compromising the higher

authority's discretion by conceding liability in claims of lesser amount.

d. *Appeals.* Denials or final offers on claims described as follows may be appealed to the official designated:

(1) For claims presented in an amount over \$100,000, final decisions on appeals will be made by the Secretary of the Army or designee.

(2) For claims presented for \$100,000 or less, and any denied claim, regardless of the amount claimed, in which the denial was based solely upon an incident to service bar, exclusionary language in a Federal statute governing compensation of Federal employees for job-related injuries (see para 2-39c) or lack of timely filing, TJAG or TAJAG will render final decisions on appeals, except that claims presented for \$25,000 or less, and not acted upon by the Commander, USARCS, are governed by subparagraph (3) below.

(3) For claims presented for \$25,000 or less, final decisions on appeals will be made by the Commander, USARCS, his or her designee, or the chief of a command claims service when such claims are acted on by an ACO under such service's jurisdiction.

(4) Paragraph 2-61 of this publication sets forth the rules relating to the notification of appeal rights and processing.

e. *Delegated authority.* Authority delegated by this paragraph will not be exercised unless the settlement or approval authority has been assigned an office code.

### 3-7. Action on appeal

a. The appeal will be examined by the settlement authority who last acted on the claim, or his or her successor, to determine if the appeal complies with the requirements of this regulation. The settlement authority will also examine the claims investigative file and decide whether additional investigation is required; ensure that all allegations or evidence presented by the claimant, agent, or attorney are documented; and ensure that all pertinent evidence is included. If claimants state that they appeal, but do not submit supporting materials within the 60-day appeal period or an approved extension thereof, these appeals will be determined on the record as it existed at the time of denial or final offer. Unless action under subparagraph *b* below is taken, the claim and complete investigative file, including any additional investigation, and a tort claims memorandum will be forwarded to the appropriate appellate authority for necessary action on the appeal.

b. If the evidence in the file, including information submitted by the claimant with the appeal and any necessary additional investigation, indicates that the appeal should be granted in whole or in part, the settlement authority who last acted on the claim, or his or her successor, will attempt to settle the claim. If a settlement cannot be reached, the appeal will be forwarded in accordance with subparagraph *a* above.

c. As to an appeal that requires action by TJAG, TAJAG, or the Secretary of the Army or designee, the Commander, USARCS, may take the action in subparagraph *b* above or forward the claim together with a recommendation for action. All matters submitted by the claimant will be forwarded and considered.

d. Since an appeal under this chapter is not an adversary proceeding, no form of hearing is authorized. A request by the claimant for access to documentary evidence in the claims file to be used in considering the appeal may be granted unless law or regulation do not permit access.

e. If the appellate authority upholds a final offer or authorizes an award on appeal from a denial of a claim, the notice of the appellate authority's action will inform the claimant that he or she must accept the award within 180 days of the date of mailing of the notice of the appellate authority's action or the award will be withdrawn, the claim will be deemed denied, and the file will be closed without future recourse.

### 3-8. Payment of costs, settlements, and judgments related to certain medical malpractice claims

a. *General.* Costs, settlements, or judgments cognizable under

10 USC 1089(f) for personal injury or death caused by any physician, dentist, nurse, pharmacist, paramedic, or other supporting personnel (including medical and dental technicians, nurse assistants, therapists, and Red Cross volunteers of the Army Medical Department (AMEDD), AMEDD personnel detailed for service with other than a Federal department, agency, or instrumentality and direct contract personnel identified in the contract as Federal employees), will be paid provided that—

(1) The alleged negligent or wrongful actions or omissions occurred during the performance of medical, dental, or related health care functions (including clinical studies and investigations) while the medical or health care employee was acting within the scope of employment.

(2) Such personnel furnish prompt notification and delivery of all process served or received and other documents, information, and assistance as requested.

(3) Such personnel cooperate in the defense of the action on its merits.

*b. Request for indemnification.* All requests for indemnification under this paragraph should be forwarded to the Commander, USARCS, for action, following the procedures set forth in this chapter.

### **3-9. Payment of costs, settlements, and judgments related to certain legal malpractice claims**

*a. General.* Costs, settlements, and judgments cognizable under 10 USC 1054(f) for damages for personal injury or loss of property caused by any attorney, paralegal, or other member of a legal staff within the DA will be paid if—

(1) The alleged negligent or wrongful actions or omissions occurred during the provision or performance of legal services while the attorney or legal employee was acting within the scope of duties or employment;

(2) Such personnel furnish prompt notification and delivery of all process served or received and other documents, information, and assistance as requested.

(3) Such personnel cooperate in the defense of the action on the merits.

*b. Request for indemnification.* All requests for indemnification under this paragraph should be forwarded to the Commander, USARCS, for action, following the procedures set forth in this chapter.

## **Chapter 4 Federal Tort Claims Act**

### **4-1. Statutory Authority**

The statutory authority for this chapter is the Federal Tort Claims Act (FTCA) (60 Stat. 842, 28 USC 2671-2680), as amended by PL 89-506, 18 July 1966 (80 Stat. 306); PL 93-253, 16 March 1974 (88 Stat. 50); PL 97-124, 29 December 1981 (93 Stat. 1666); PL 100-694, 18 November 1988 (102 Stat. 4563-67); and PL 101-552, 15 November 1996 (104 Stat. 734); and as implemented by the Attorney General's Regulations (28 CFR 14.1-14.11).

### **4-2. Scope**

*a.* This chapter applies in the United States, its commonwealths, territories and possessions (all hereinafter collectively referred to as United States or U.S.) and prescribes the substantive bases and special procedural requirements under the FTCA and the implementing Attorney General's regulations for the administrative settlement of claims against the United States based on death, personal injury, or damage to, or loss of, property caused by negligent or wrongful acts or omissions by the United States or its employees acting within the scope of their employment. If a conflict exists between this regulation and the Attorney General's regulations, the latter governs.

*b. Effect of the Military Claims Act.* A claim arising in the

United States may be settled under the Military Claims Act (MCA) only if the claim arises incident to the MCA's noncombat activities provisions because the courts have held that the FTCA does not apply. When a claim is filed under both the FTCA and the MCA, or when both statutes apply equally, however, final action thereon will follow the procedures set forth in DA Pam 27-162, subparagraph 2-91d.

### **4-3. Claims payable**

*a.* Unless otherwise prescribed, claims for death, personal injury, or damage to, or loss of, property (real or personal) are payable under this chapter when the injury or damage is caused by negligent or wrongful acts or omissions of military personnel or civilian employees of the DA or DOD while acting within the scope of their employment under circumstances in which the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. The FTCA is a limited waiver of sovereign immunity without which the United States may not be sued. Similarly, neither the Fifth Amendment nor any other provision of the U.S. Constitution creates or permits a Federal cause of action allowing recovery in tort. Immunity must be expressly waived, as the FTCA waives it.

*b.* To be payable, a claim must arise from the acts or omissions of an "employee of the Government" under 28 USC 2671. Categories of such employees are listed in subparagraph 2-2c(4) of this publication.

### **4-4. Claims not payable**

A claim is not payable if it is listed in paragraph 2-39.

### **4-5. Applicable law**

The applicable law is set forth in paragraphs 2-38 and 2-41.

### **4-6. Settlement authority**

*a.* Subject to the Attorney General's approval of payments in excess of \$200,000 for a single claim, or if the total value of all claims and potential claims arising out of a single incident exceeds \$200,000, the following officials are delegated authority to settle (including payment in full or in part, or denial) and make final offers on claims under this chapter:

(1) TJAG.

(2) TAJAG.

(3) The Commander, USARCS, or his or her designees.

*b.* Unless the Commander, USARCS, alters the delegation, heads of area claims offices (ACO) are delegated authority to approve and pay in full or in part, to disapprove, and to make final offers on, claims presented for \$25,000 or less. The authority to pay claims may be delegated to a CJA or claims attorney. These officials are also authorized to approve and pay, regardless of the amount claimed, an agreed award of \$25,000 or less, provided that the total value of all claims and potential claims arising out of a single incident does not exceed \$50,000.

*c.* Notice of disapproval or final offer issued by an authority listed above will be made in accordance with subparagraph 1-5g(2) and paragraphs 2-57 through 2-59. Such notice must also explain that the claimant may submit a written request for reconsideration, (para 4-7), in lieu of filing suit, to the Commander, USARCS (through the office issuing the disapproval or final offer), provided that the request is received before the expiration of the six-month period set forth in 28 USC 2401(b). Once the request is received, the claimant will be advised in writing that the request will suspend the option to bring suit under 28 USC 2675(a) for six months from the date the request was received or until action is taken on the request for reconsideration.

*d.* Unless the Commander, USARCS, alters the delegation, heads of claims processing offices (CPO) with approval authority or their designated CJAs or claims attorneys are delegated authority to approve and pay, in full or in part, claims presented for \$5,000 or less and to compromise and pay, regardless of the amount claimed, an award of \$5,000 or less, provided that the total value of all claims and potential claims arising out of a single incident does not exceed

\$25,000 and the claimant agrees to accept the award in full satisfaction of the claim.

#### 4-7. Reconsideration

a. Original approval or settlement authority.

(1) *Reconsideration.* An original settlement authority may reconsider the denial of, or final offer on, a claim brought under the FTCA upon request of the claimant or the legal representative.

(2) *Settlement correction.* An original approval or settlement authority may reopen and correct action on a claim previously settled in whole or in part (even if a settlement agreement has been executed) when an error contrary to the parties' mutual understanding is discovered in the original action. For example: a claim was settled for \$15,000, but the settlement agreement was typed to read "\$1,500" and the error is not discovered until the file is being prepared for payment. If appropriate, a corrected payment will be made. An approval or settlement authority who has reason to believe that a settlement was obtained by fraud on the part of the claimant or claimant's legal representative, will reopen action on that claim and, if the belief is substantiated, correct the action. The basis for correcting an action will be stated in a memorandum and included in the file.

b. A successor approval or settlement authority.

(1) *Reconsideration.* A successor approval or settlement authority may reconsider the denial of, or final offer on, an FTCA claim upon request of the claimant, the claimant's authorized agent, or the claimant's legal representative only on the basis of fraud, substantial new evidence, errors in calculation, or mistake (misinterpretation) of law.

(2) *Settlement correction.* A successor approval or settlement authority may reopen and correct a predecessor's action on a claim that was previously settled in whole or in part for the same reasons that an original authority may do so.

c. *Requirement to forward a request for reconsideration.* When full relief is not granted, forward all requests for reconsideration of an ACO's denial or final offer to the Commander, USARCS, for action. Include all investigative material and legal analyses generated by the request.

d. *Action prior to forwarding.* A request for reconsideration should disclose fully the legal and/or factual bases that the claimant has asserted as grounds for relief and provide appropriate supporting documents or evidence. Following completion of any investigation or other action deemed necessary for an informed disposition of the request, the approval or settlement authority will reconsider the claim and attempt to settle it, granting relief as warranted. When further settlement efforts appear unwarranted, the entire file with a memorandum of opinion will be forwarded to the Commander, USARCS. The claimant will be informed of such transfer.

e. *Time requirement for filing request for reconsideration.* To be timely, a request for reconsideration must be filed before the commencement of suit and before the six-month period set forth in 28 USC 2401(b) has expired. Upon timely filing, the appropriate authority will have six months from the date of filing in which to make a final disposition of the request, and the claimant's option to bring suit under 28 USC 2675(a) will not accrue until six months after the filing of the request or until the request for reconsideration has been acted upon. The action on the request will be effected as set forth in paragraphs 2-57 and 2-58.

f. *Finality of action.* Action by the appropriate authority (either affirming the prior action or granting full or partial relief) upon a request for reconsideration constitutes final administrative disposition of a claim. No further requests for reconsideration will be allowed except on the basis of fraud. Attempted further requests for reconsideration on other grounds will not toll the six-month period set forth in 28 USC 2401(b).

## Chapter 5 Non-Scope Claims Act

### 5-1. Statutory authority

The statutory authority for this chapter is set forth in the Act of 9 October 1962 (10 USC 2737, 76 Stat. 767), commonly called the "Non-Scope Claims Act."

### 5-2. Scope

a. This chapter applies worldwide and prescribes the substantive bases and special procedural requirements for the administrative settlement and payment of not more than \$1,000 for any claim against the United States for personal injury or death or damage to, or loss of, property caused by military personnel or civilian employees, incident to the use of a U.S. vehicle at any location or incident to the use of other U.S. property on a Government installation, which claim is not cognizable under any other provision of law.

b. For the purposes of this chapter, a "Government installation" is a facility having fixed boundaries owned or controlled by the Government, and a "vehicle" includes every description of carriage or other artificial contrivance used, or capable of being used, as means of transportation on land (1 USC 4).

c. Any claim in which there appears to be a dispute about whether the employee was acting within the scope of employment will be considered under chapters 3, 4, or 6 of this regulation. Only when all parties, including an insurer, agree that there is no "in scope" issue will the claim be considered under this chapter.

### 5-3. Claims payable

a. *General.* A claim for personal injury, death, or damage to, or loss of, property, real or personal, is payable under this chapter when—

(1) Caused by negligent or wrongful acts or omissions of DOD or DA military personnel or civilian employees, as listed in subparagraph 2-2c(4):

(a) Incident to the use of a vehicle belonging to the United States at any place.

(b) Incident to the use of any other property belonging to the United States on a Government installation.

(2) The claim is not payable under any other claims statute and regulation available to the DA for the administrative settlement of claims.

b. *Personal injury or death.* A claim for personal injury or death is allowable only for the cost of reasonable medical, hospital, or burial expenses actually incurred and not otherwise furnished or paid by the United States.

c. *Property loss or damage.* A claim for damage to or loss of property is allowable only for the cost of reasonable repairs or value at time of loss, whichever is less.

### 5-4. Claims not payable

a. Under this chapter, a claim is not allowable that—

(1) Results in whole or in part from the negligent or wrongful act of the claimant or his or her agent or employee. The doctrine of comparative negligence does not apply.

(2) Is for medical, hospital, or burial expenses furnished or paid by the United States.

(3) Is for any element of damage pertaining to personal injuries or death other than as provided in paragraph 5-3b. All other items of damage, for example, compensation for loss of earnings and services, diminution of earning capacity, anticipated medical expenses, physical disfigurement and pain and suffering are not payable.

(4) Is for loss of use of property or for the cost of substitute property, for example, a rental.

(5) Is legally recoverable by the claimant under an indemnifying law or indemnity contract. If the claim is in part legally recoverable, the part recoverable by the claimant is not payable.

(6) Is a subrogated claim.

### 5-5. Settlement authority

a. *Settlement authority.* The following are delegated authority to

pay up to \$1,000 in settlement of each claim arising out of one incident and to disapprove a claim presented in any amount under this chapter:

- (1) TJAG.
- (2) TAJAG.
- (3) The Commander, USARCS, or his designees.
- (4) The JA or SJA or chief of a command claims service or their designated CJAs or claims attorneys.
- (5) Heads of ACOs or their designated CJAs or claims attorneys.

*b. Approval authority.* Heads of CPOs or their designated CJAs or claims attorneys with approval authority are delegated authority to approve and pay, in full or in part, claims presented for \$1,000 or less and to compromise and pay, regardless of amount claimed, an agreed award of \$1,000 or less.

## **5-6. Reconsideration**

The provisions of paragraph 4-7 addressing reconsideration apply and are incorporated herein by reference. If the claim is not cognizable under the FTCA, appellate procedures under the MCA or NGCA apply.

## **Chapter 6 National Guard Claims Act**

### **6-1. Statutory authority**

The statutory authority for this chapter is contained in the Act of 13 September 1960 (32 USC 715, 74 Stat. 878), commonly referred to as the "National Guard Claims Act" (NGCA) as amended by PL 90-486, (82 Stat. 756) 13 August 1968; PL 90-525, (82 Stat. 877) 26 September 1968; PL 91-312, (84 Stat. 412) 8 July 1970; PL 93-336, (88 Stat. 291) 8 July 1974; the Act of 8 September 1961 (75 Stat. 488, 10 USC 2736); PL 90-521, (82 Stat. 874) 26 September 1968; and PL 98-564, (98 Stat. 2918) 20 October 1984.

### **6-2. Scope**

This chapter applies worldwide and prescribes the substantive bases and special procedural regulations for the settlement of claims against the United States for death, personal injury, or damage to or loss or destruction of property.

*a. Soldiers of the Army National Guard (ARNG) can perform military duty (1) in an active duty status under the authority of 10 USC; (2) in a full-time National Guard duty or inactive-duty training status under the authority of 32 USC; or (3) in a State active duty status under the authority of the State code.*

(1) When an ARNG soldier performs active duty, he or she is under Federal command and control and is paid from Federal funds. For claims purposes, that soldier is treated as an active duty soldier. The NGCA, 32 USC 715, does not apply.

(2) When an ARNG soldier performs full-time National Guard duty or inactive-duty training, he or she is under State command and control and is paid from Federal funds. The NGCA does apply, but as explained in subparagraph *c*, it is seldom used.

(3) When an ARNG soldier performs State active duty, he is under State command and control and is paid from State funds. Federal claims statutes do not apply, but State claims statutes may apply.

*b. The ARNG also employs civilians, referred to as technicians and employed under 32 USC 709. Technicians are usually, but not always, ARNG soldiers who perform the usual 15 days of annual training (a category of full-time duty) and 48 drills (inactive-duty training) per year.*

*c. NGCA coverage applies only to ARNG soldiers performing full-time National Guard duty or inactive-duty training and to technicians. However, since the NGCA's enactment in 1960, Congress has also extended Federal Tort Claims Act (FTCA) coverage to these personnel.*

(1) In 1968, technicians, who were State employees formerly, were made Federal employees. Along with Federal employee status

came FTCA coverage. Technicians no longer have any State status, albeit they are hired, fired, and administered by a State official, the Adjutant General, acting as the agent of the Federal Government.

(2) In 1981, Congress extended FTCA coverage to ARNG soldiers performing full-time National Guard duty or inactive-duty training (such as any training or other duty under 32 USC 316, 502-505). Unlike deeming technicians Federal employees, this extension of coverage did not affect their underlying status as State military personnel.

*d. Because claims arising from the negligent acts or omissions of ARNG soldiers performing full-time National Guard duty or inactive-duty training or of technicians will be processed under the FTCA, the NGCA is generally relevant only to claims arising from noncombat activities or outside the United States.*

### **6-3. Claims payable**

The provisions of paragraph 3-3 apply to claims arising under this chapter and are incorporated herein by reference.

### **6-4. Claims not payable**

The provisions of paragraph 3-4 apply to claims arising under this chapter and are incorporated herein by reference.

### **6-5. Applicable law**

The provisions of paragraph 3-5 apply to claims arising under this chapter and are incorporated herein by reference.

### **6-6. Settlement authority**

The provisions of paragraph 3-6 apply to claims arising under this chapter and are incorporated herein by reference.

### **6-7. Actions on appeals.**

The provisions of paragraph 3-7 apply to claims arising under this chapter and are incorporated herein by reference.

## **Chapter 7 International Agreements**

### **Section I General**

#### **7-1. Statutory authority**

The authority for claims presented or processed under this chapter is set forth in the following Federal laws and bi- or multi-national agreements:

*a. 10 USC 2734a, as amended, for claims arising overseas under international agreements.*

*b. 10 USC 2734b, as amended, for claims arising within this country under international agreements.*

*c. Various international agreements, such as the North Atlantic Treaty Organization Status of Forces Agreement (NATO SOFA), including Japanese SOFA, Korean SOFA, Australian SOFA, and Iceland SOFA, requiring payment of claims arising out of the performance of official duties.*

### **Section II Claims Arising in the United States**

#### **7-2. Scope**

*a. This section sets forth procedures and responsibilities for the investigation, processing, and settlement of claims arising out of any acts or omissions of members of a foreign military force or civilian component present in the United States or a territory, commonwealth, or possession thereof under the provisions of reciprocal international agreements which contain claims settlement provisions applicable to claims arising in the United States. Article VIII of the NATO SOFA is currently the only treaty that has reciprocal provisions applying to all NATO member countries and other countries that have ratified the Partnership for Peace Agreement.*

b. The responsibility for implementing Article VIII within the United States has been delegated to the Secretary of the Army (SA). The SA, in turn, has delegated that responsibility to the Commander, USARCS, who is in charge of the receiving State office for the United States. DODD 5515.8. The Commander, USARCS, is responsible for maintaining direct liaison with sending State representatives and establishing procedures designed to carry out the provisions of this chapter.

c. NATO SOFA, Article VIII, describes three types of claims:

(1) *Intergovernmental claims.* Claims of one contracting party against any other contracting party for damage to property owned by its armed services, or for injury or death suffered by a member of the armed services engaged in the performance of official duties, are waived. Claims above a minimal amount for damage to property owned by a governmental entity of other than the armed services may be asserted, NATO SOFA, Article VIII, paragraphs 1-4.

(2) *Third-party scope claims.* Claims arising out of any acts or omissions of members of a force or the civilian component of a sending State done in the performance of official duty or any other act, omission, or occurrence for which the sending State is legally responsible shall be filed, considered and settled in accordance with the laws and regulations of the United States with respect to claims arising from the activities of its own armed service, NATO SOFA, Article VIII, paragraph 5.

(3) *Ex gratia claims.* Claims arising out of tortious acts or omissions not done in the performance of official duties shall be considered by the sending State for an ex gratia payment that is made directly to the injured party, NATO SOFA, Article VIII, paragraph 6.

d. Article VIII applies to claims arising within the North Atlantic Treaty Area, which includes the continental United States and its territories, commonwealths and possessions north of the Tropic of Cancer or the 20th longitudinal parallel. (This excludes Puerto Rico, the Virgin Islands, and parts of Hawaii.) It also applies to claims arising out of acts or omissions made by military or civilian personnel, regardless of nationality, who are assigned or attached to, or employed by, an international headquarters established under the provisions of the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty, dated 28 August 1952, such as Supreme Allied Command, Atlantic.

### 7-3. Claims payable

a. Within the United States, third-party scope claims are payable under chapter 4 or, if the claim arises incident to noncombat activities, under chapter 3. Maritime claims are payable under chapter 8. The provisions of these chapters on what claims are payable apply equally here. The members of the foreign force or civilian component must be acting in pursuance of the applicable treaty's objectives.

b. Within the United States, third-party ex gratia claims are payable only by the sending State and are not payable under chapter 5.

### 7-4. Claims not payable

The following claims are not payable:

a. Claims arising from a member of a foreign force or civilian component's acts or omissions that do not accord with the objectives of a treaty authorizing their presence in the United States.

b. Third-party scope claims arising within the United States that are not payable under chapters 3, 4, or 8 are listed as barred under those chapters. As sending State forces are considered assimilated into the U.S. Armed Services for purposes of the SOFAs, their members are also barred from receiving compensation from the United States when they are injured incident to their service, *Daberkow v. United States*, 581 F.2d 785 (9th Cir. 1978).

### 7-5. Notification of incidents

For USARCS to discharge its claims responsibilities under NATO SOFA properly, it must be notified of all incidents, including off-duty incidents, in which members of a foreign military force or civilian component are involved. Any member or employee of the

U.S. Armed Services who learns of an incident involving a member of a foreign military force or civilian component resulting in personal injury, death, or property damage, will immediately notify the judge advocate (JA) or legal officer at the installation or activity to which such person is assigned or attached. The JA or legal officer receiving such notification will in turn notify the Commander, USARCS. In the event the member is neither assigned nor attached to any installation or activity within the United States, the Commander, USARCS, will be notified.

### 7-6. Investigation

Responsibility for investigating an incident rests upon the area claims office (ACO) or claims processing office (CPO) responsible for the geographic area in which the incident occurred. The Commander, USARCS, an ACO, and a CPO are authorized to designate the legal office of the installation at which the member of the foreign force or civilian component is attached, including the legal office of another armed force, to carry out the responsibility to investigate. The investigation will comply with the responsible Service's implementing claims regulation. When the member is neither assigned nor attached within the United States, the Commander, USARCS, will furnish assistance.

### 7-7. Settlement authority

Settlement authority is delegated to the Commander, USARCS, or his or her designee, except for settlement amounts exceeding the Commander's or designee's authority, as set forth in chapters 3, 4, or 8 or in those cases where settlement is reserved to a higher authority.

### 7-8. Assistance to foreign forces

As claims arising from activities of members of NATO or Partnership for Peace forces in the United States are processed in the same manner as those arising from activities of U.S. Government personnel, all JAs and legal offices will provide assistance similar to that provided to U.S. Armed Services personnel.

## Section III

### Claims Arising Overseas

### 7-9. Scope

a. This section sets forth guidance on claims arising from any act or omission of soldiers or members of the civilian component of the U.S. Armed Services done in the performance of official duty or arising from any other act or omission or occurrence for which the U.S. Armed Services are responsible under an international agreement. Claims incidents arising in countries for which the SOFA requires the receiving State to adjudicate and pay the claims in accordance with its laws and regulations are subject to partial reimbursement by the United States.

b. Claims by foreign inhabitants based on acts or omissions outside the scope of official duties are cognizable under chapter 10. Claims arising from nonscope acts or omissions by third parties who are not foreign inhabitants are cognizable under chapter 5 but not under chapters 3 or 6.

### 7-10. Claims procedures

a. SOFA provisions that call for the receiving State to adjudicate claims have been held to be the exclusive remedy for claims against the United States, *Aaskov v. Aldridge*, 695 F. Supp. 595 (D.D.C. 1988); *Dancy v. Department of Army*, 897 F. Supp. 612 (D.D.C. 1995).

b. SOFA provisions that call for the receiving State to adjudicate claims against the United States usually refer to claims by third parties brought against members of the force or civilian component. This includes claims by tourists or business travelers as well as inhabitants of foreign countries. Depending on how the receiving State interprets the particular SOFA's class of proper claimants, the receiving State may also consider claims by soldiers, civilian employees, and their family members. Chiefs of command claims services or other Army JA offices responsible for claims that arise in

countries bound by SOFA or other treaty provisions requiring a receiving State to consider claims against the United States will ensure that all claims personnel know the receiving State's policy on which person or classes of persons are proper claimants under such provisions. When a claim is filed both with the receiving State and under either the MCA or FCA, the provisions of subparagraph 3-4a(8) of this publication and DA Pam 27-162, subparagraph 3-4a, apply.

c. Where SOFA provisions provide for receiving State claims consideration, the time limit for filing such claims is often substantially shorter than the two years otherwise allowed under the FCA or MCA. For example, Defense Cost Offices in Germany require that a claim be filed under the SOFA within 90 days of the date that the claimant is aware of U.S. involvement.

d. All foreign inhabitants who file claims against the United States that fall within the receiving State's responsibility, such as claims based on acts or omissions within the scope of U.S. Armed Forces members' or civilian employees' duties, must file the claim with the appropriate receiving State office. Those U.S. inhabitants whose claims would be otherwise cognizable under the MCA (chap 3) and whom the receiving State deems proper claimants under the SOFA must also file with the receiving State.

e. A claim filed with, and considered by, a receiving State under a SOFA or other international agreement claims provision may be considered under other chapters of this regulation only if the receiving State denied the claim on the basis that it was not cognizable under the treaty or agreement provisions. See DA Pam 27-162, subparagraph 3-4a, for conditions of waiver of the foregoing requirement. See also subparagraphs 3-4a(8) and 10-4j of this publication. Where a claimant has filed a claim with a receiving State and received payment or the claim has been denied on the merits, such action will be the claimant's final and exclusive remedy and will bar any further claims against the United States.

## **7-11. Responsibilities**

a. The Commander, USARCS, is responsible for—

(1) Providing policy guidance to Command claims services or other responsible JA offices on SOFA or other treaty reimbursement programs implementing 10 USC 2734a.

(2) Monitoring the reimbursement system to ensure that programs for the proper verification and certification of reimbursement claims are in place.

(3) Monitoring funds reimbursed to foreign governments.

b. Command claims services or other responsible JA offices, within whose jurisdiction SOFA or other treaty provisions provide for a claim reimbursement system, and where DA has been assigned single-service responsibility for the foreign country seeking reimbursement (see para 1-10) are responsible for—

(1) Establishing programs for verifying, certifying, and reimbursing claims payments. Such service or JA office will provide a copy of its procedures implementing the program to the Commander, USARCS.

(2) Providing the Commander, USARCS, with budget estimates for reimbursements in addition to the reports required by paragraph 13-12.

(3) Providing the Commander, USARCS, each month in which payments are made, with statistical information on the number of individual claims reimbursed, the total amount paid by the foreign government, and the total amount reimbursed by the United States.

(4) Providing the Commander, USARCS, with a quarterly report showing total reimbursements paid during the quarter for maneuver damage and tort claims classified according to major categories of damage determined by the Commander, USARCS, and an update on major issues or activities that could affect the reimbursement system's operation or funding.

c. Command claims services or other responsible Army JA offices will ensure that all claims personnel within their areas of responsibility—

(1) Receive annual training on the receiving State's claims procedures, including applicable time limitations, procedures and the responsible receiving State claims offices' or agencies' locations.

(2) Screen all new claims and inquiries about claims to identify those claimants who must file with the receiving State.

(3) Ensure that all such claimants are informed of this requirement and the applicable time limitation.

(4) Ensure that all NATO SOFA claims based on incidents occurring in circumstances that bring them within the United States' primary sending State jurisdiction are fully investigated.

## **Chapter 8 Maritime Claims**

### **Section I General**

#### **8-1. Statutory authority**

Administrative settlement or compromise of admiralty and maritime claims in favor of, and against, the United States by the Secretary of the Army, or his or her designee, is authorized by the Army Maritime Claims Settlement Act (AMCSA) (10 USC 4801-04, 4806, as amended).

#### **8-2. Related statutes**

The AMCSA is supplemented by the following statutes under which suits in admiralty may be brought: the Suits in Admiralty Act (46 USC app 741-752); the Public Vessels Act (PVA) (46 USC app 781-790); the Act Extending the Admiralty and Maritime Jurisdiction (46 USC 740). Similar maritime claims settlement authority is exercised by the Department of the Navy under 10 USC 7365 and 7621-23 and by the Department of the Air Force under 10 USC 9801-04 and 9806.

### **Section II Claims Against the United States**

#### **8-3. Scope**

10 USC 4802 provides for the settlement or compromise of claims for—

a. Damage caused by a vessel of, or in the service of, the Department of Army (DA) or by other property under the jurisdiction of the DA.

b. Compensation for towage and salvage service, including contract salvage, rendered to a vessel of, or in the service of, the DA or other property under the jurisdiction of the DA.

c. Damage that is maritime in nature and caused by tortious conduct of U.S. military personnel or Federal civilian employees, an agent thereof, or property under the Army's jurisdiction.

#### **8-4. Claims payable**

A claim is cognizable under this chapter if it arises in or on a maritime location, involves some traditional maritime nexus or activity, and is caused by the wrongful act or omission of a member of the U.S. Army, DOD or DA civilian employee, or an agent thereof, while acting within the scope of employment. This class of claims includes, but is not limited to—

a. Damage to a ship, boat, barge, or other water craft.

b. An injury that involves a ship, boat, barge, or other water craft.

c. Damage to a wharf, pier, jetty or other structure on, or adjacent to, any body of water.

d. Damage or injury on land or on water arising under the AEA and allegedly due to operation of an Army-owned or -leased ship, boat, barge, or other water craft.

e. An injury that occurs on board an Army ship, boat, barge or other water craft.

f. Crash into water of an Army aircraft.

### 8-5. Claims not payable

Under this chapter, claims are not payable if they—

- a. Are listed in paragraph 2-39, except for those excluded in subparagraph 2-39d(5) and (11).
- b. Are outside the maritime jurisdiction of the United States.
- c. Are not in the best interests of the United States, are contrary to public policy, or are otherwise contrary to the basic intent of the governing statute, for example: claims for property loss or damage or personal injury or death by inhabitants of unfriendly foreign countries or by individuals considered to be unfriendly to the United States. When a claim is considered not payable for the reasons stated in this paragraph, it will be forwarded for appropriate action to the Commander, USARCS, along with the recommendations of the responsible claims office.
- d. Are presented by a national, or a corporation controlled by a national, of a country at war or engaged in armed conflict with the United States, or any country allied with such enemy country unless the appropriate settlement authority determines that the claimant is and, at the time of incident, was friendly to the United States. A prisoner of war or an interned enemy alien is not excluded or barred from bringing a claim for damage, loss, or destruction of personal property while held in the custody of the Government if the claim is otherwise payable.
- e. Are for damages or injuries that a receiving State should pay for under an international agreement. See paragraph 2-19.

### 8-6. Limitation of settlement

The period of completing an administrative settlement under the AMCSA is subject to the same time limitation as that for beginning suit under the SIAA or PVA; that is, a two-year period from the date the cause of the action accrued. The claimant must have agreed to accept the settlement and it must be approved for payment by the Secretary of the Army or other approval authority prior to the end of such period. The presentation of a claim, or its consideration by the DA, neither waives nor extends the two-year limitation period and the claimant should be so informed, in writing, when the claim is acknowledged. See paragraph 2-8.

### 8-7. Limitation of liability

Under the provisions of the Limitation of Shipowners' Liability Act, 46 USC 181-188, in cases alleging injury or loss due to negligent operation of its vessel, the United States may limit its liability to the value of its vessel after the accident. The Act requires filing of an action in Federal District Court within six months of receiving written notice of a claim. Therefore, USARCS must be notified within 10 working days of the receipt of any maritime claim arising in the United States or on the high seas out of the operation of an Army vessel, including pleasure craft owned by the United States. USARCS will coordinate with the DOJ as to whether to file a limitation of liability action.

### 8-8. Settlement authority

- a. The Secretary of the Army, the Army General Counsel as designee of the Secretary, or other designee of the Secretary may approve any settlement or compromise of a claim in an amount not to exceed \$500,000. A claim settled or compromised in a net amount exceeding \$500,000 will be investigated and processed and, if approved by the Secretary of the Army or his or her designee, will be certified to Congress for final approval.
- b. TJAG, TAJAG, the Commander, USARCS, the Chief Counsel, U.S. Army Corps of Engineers (USACE), or his or her designees in USACE Division or District Counsel Offices are delegated authority to settle (such as to deny or approve payment in full or in part) any claim under this chapter regardless of the amount claimed, provided that any award does not exceed \$100,000.
- c. Unless the Commander, USARCS, alters the delegation, chiefs of command claims services and heads of area claims offices (ACO) or their designated CJA or claims attorneys are delegated authority to pay up to \$25,000, regardless of the amount claimed, and to disapprove or make a final offer on a claim presented in an amount

not exceeding \$25,000. The authority to pay claims may be delegated to a CJA or claims attorney.

- d. Only the authorities designated in subparagraphs *a* and *b* above may deny or make a final offer on a claim for more than \$25,000 in compensation. If a claim cannot be settled within the head of an ACO's authority or that of the chief of a command claims service, it will be forwarded to the Commander, USARCS, through appropriate channels, along with a claims memorandum of opinion recommending disposition.

## Section III

### Claims in favor of the United States

#### 8-9. Scope

a. 10 USC 4803 provides for agency settlement or compromise of claims for damage to—

- (1) DA-accountable properties of a kind that are within the Federal maritime jurisdiction.

- (2) Property under the DA's jurisdiction or DA property damaged by a vessel or floating object.

b. 10 USC 4804 provides for the settlement or compromise of claims in any amount for salvage services (including contract salvage and towage) performed by the DA. Claims for salvage services are based upon labor cost, per diem rates for the use of salvage vessels and other equipment, and repair or replacement costs for materials and equipment damaged or lost during the salvage operation. The sum claimed is usually intended to compensate the United States for operational costs only, reserving, however, the Government's right to assert a claim on a salvage bonus basis in accordance with commercial practice.

c. The United States has three years from the date a maritime claim accrues under this section to file suit against the responsible party or parties. The Army's authority to settle or compromise a suit under this section terminates when the statute of limitations has run. Efforts to compromise a claim under this section should not extend more than two years past the date the claim accrues unless it is clear that an administrative settlement is probable. As a general rule, affirmative claims that are likely to be resolved through litigation should be referred to the DOJ not later than two years after the date the claim accrues.

#### 8-10. Civil works claims

Under the River and Harbors Act (33 USC 408), the United States has the right to recover fines, penalties, forfeitures and other special remedies in addition to compensation for damage to civil works structures such as a lock or dam. However, claims arising under 10 USC 4804 are limited to recovery of actual damage to USACE civil works structures.

#### 8-11. Settlement authority

a. The Secretary of the Army, the Army General Counsel as designee of the Secretary, or other designee of the Secretary may compromise an affirmative claim brought by the United States in an amount not to exceed \$500,000. A claim settled or compromised in a net amount exceeding \$500,000 will be investigated and processed and, if approved by the Secretary of the Army or his or her designee, certified to Congress for final approval.

b. TJAG, TAJAG, the Commander, USARCS, the Chief Counsel, USACE, or his or her designees in USACE Division or District Counsel Offices may settle or compromise and receive payment on a claim by the United States under this chapter if the amount to be received does not exceed \$100,000. These authorities may also terminate collection of claims for the convenience of the Government in accordance with the standards specified by the DOJ. See 4 CFR Parts 103 and 104.

c. Unless the Commander, USARCS, alters the delegation, chiefs of command claims services and heads of ACOs or their designated CJAs or claims attorneys may receive payment for the full amount of a claim not exceeding \$100,000, or compromise any claim in which the amount to be recovered does not exceed \$25,000 and the amount claimed does not exceed \$100,000.



d. Any money collected under this authority shall be deposited into the U.S. General Treasury.

#### **8-12. Demands**

a. It is essential that Army claims personnel demand payment, or notify the party involved of the Army's intention to make such demands, as soon as possible following receipt of information of damage to Army property where the party's legal liability to respond exists or might exist. Copies of the initial demand or written notice of intention to issue a demand letter, as well as copies of subsequent correspondence, will be provided promptly to the Commander, USARCS, who will monitor the progress of such claims.

b. Where, in response to any demand, a respondent denies liability, fails to respond within a reasonable period, or offers a compromise settlement, the file will be promptly forwarded to the Commander, USARCS, except those cases in which a proposed compromise settlement is deemed acceptable and the claim is otherwise within the authority delegated in paragraph 8-11.

### **Chapter 9**

## **Claims Cognizable Under Article 139, Uniform Code of Military Justice**

#### **9-1. Statutory authority**

The authority for this chapter is article 139, Uniform Code of Military Justice (UCMJ) (10 USC 939), which provides redress for property willfully damaged or destroyed, or wrongfully taken, by members of the Armed Forces of the United States.

#### **9-2. Purpose**

This chapter sets forth the standards to apply and the procedures to follow in processing claims for the wrongful taking or willful damage or destruction of property by military members of the Department of the Army (DA). A proper claimant under this chapter includes any individual (whether civilian or military), a business, a charity, or a State or local government who owns, has an ownership interest in, or lawfully possesses property. When cognizable claims are presented against a unit because the individual offenders cannot be identified, this chapter sets forth the procedures for approval authorities to direct pay assessments, totaling the amount of damages sustained, against the unit members who were present at the scene and allocate individual liability in such proportion as is just under the circumstances. Claims cognizable under other claims statutes may be processed under this chapter.

#### **9-3. Effect of disciplinary action, voluntary restitution, or contributory negligence**

a. *Disciplinary action.* Administrative action under article 139, UCMJ, and this chapter is entirely separate and distinct from disciplinary action taken under other sections of the UCMJ or other administrative actions. Because action under both article 139, UCMJ, and this chapter requires independent findings on issues other than guilt or innocence, a soldier's conviction or acquittal of claim related charges is not dispositive of liability under article 139, UCMJ.

b. *Voluntary restitution.* The approval authority may terminate Article 139 proceedings without findings if the soldier voluntarily makes full restitution to the claimant.

c. *Contributory negligence.* A claim otherwise cognizable and meritorious is payable whether or not the claimant was negligent.

#### **9-4. Claims cognizable**

Claims cognizable under article 139, UCMJ, are limited to the following:

a. *Claims for property willfully damaged.* Willful damage is damage inflicted intentionally, knowingly, and purposefully without justifiable excuse, as distinguished from damage caused inadvertently or thoughtlessly in a negligent manner. Damage, loss, or destruction of property caused by riotous, violent, or disorderly acts

or acts of depredation, or through conduct showing reckless or wanton disregard of the property rights of others, may be considered willful damage.

b. *Claims for property wrongfully taken.* A wrongful taking is any unauthorized taking or withholding of property, not involving the breach of a fiduciary or contractual relationship, with the intent to deprive, temporarily or permanently, the owner or person lawfully in possession of the property. Damage, loss, or destruction of property through larceny, forgery, embezzlement, fraud, misappropriation or similar offense may be considered wrongful taking.

#### **9-5. Claims not cognizable**

Claims not cognizable under Article 139, UCMJ, and this chapter, include the following:

a. Claims resulting from negligent acts.

b. Claims for personal injury, death, and theft of services.

c. Claims resulting from acts or omissions of military personnel acting within the scope of their employment.

d. Claims resulting from the conduct of Reserve Component personnel who are not subject to the UCMJ at the time of the offense.

e. Subrogated claims, including claims by insurers.

f. Claims involving only contractual and fiduciary disputes.

g. Claims for consequential damages.

#### **9-6. Limitations on assessments**

a. *Limitations on amount.*

(1) A special court-martial convening authority (SPCMCA) has authority to approve a pay assessment in an amount not to exceed \$5,000 on a single incident and to deny a claim in any amount.

(2) A general court-martial convening authority (GCMCA), or designee, has authority to approve a pay assessment in an amount not to exceed \$10,000 on a single incident and to deny a claim in any amount.

(a) If the GCMCA or designee determines that a claim exceeding \$10,000 for a single incident is meritorious, that officer will assess the soldier's pay in the amount of \$10,000 and forward the claim to the Commander, USARCS, with a recommendation to increase the assessment.

(b) If the head of the area claims office (ACO) (usually the GCMCA's SJA) decides that the GCMCA's final action under the provisions of Rule for Court-Martial 1107 in a court-martial arising out of the same incident would be compromised, that officer may forward the article 139 claim to USARCS for action.

(3) Only TJAG, TAJAG, the Commander, USARCS, or designee has authority to approve single incident assessments in excess of \$10,000.

b. *Limitations on type of damages.* Property loss or damage assessments are limited to direct damages. This chapter does not provide redress for indirect, remote, or consequential damages.

#### **9-7. Procedure**

a. *Time limitations on submission of a claim.* A claim must be submitted within 90 days of the incident that gave rise to it, unless the SPCMCA acting on the claim determines there is good cause for delay.

b. *Form and presentment of a claim.* The claimant or authorized agent may present a claim orally or in writing. If presented orally, the claim must be reduced to writing, signed, and seek a definite sum in U.S. dollars within 10 days after oral presentment.

c. *Action upon receipt of a claim.* Any officer receiving a claim will forward it within two working days to the SPCMCA exercising jurisdiction over the soldier or soldiers against whom the claim is made. If the claim is made against soldiers under the jurisdiction of more than one convening authority who are under the same GCMCA, forward the claim to that GCMCA. That GCMCA will designate one SPCMCA to investigate and act on the claim as to all soldiers involved. If the claim is made against soldiers under the jurisdiction of more than one SPCMCA at different locations and not under the same GCMCA, forward the claim to the SPCMCA whose headquarters is located nearest the situs of the alleged incident. That SPCMCA will investigate and act on the claim as to all

soldiers involved. If a claim is brought against a member of one of the other military services, forward the claim to the commander of the nearest major command of that service equivalent to a major Army command (MACOM).

*d. Action by the special court-martial convening authority.*

(1) If the claim appears to be cognizable, the SPCMCA will appoint an investigating officer (IO) within four working days of receipt of a claim. The IO will follow the procedures of this chapter supplemented by DA Pam 27-162, chapter 9, and AR 15-6, chapter 4, which applies to informal investigations. The SPCMCA may appoint the claims officer of a command (if the claims officer is a commissioned officer) as the IO.

(2) If the claim is not brought against a person who is a member of the Armed Forces of the United States at the time the claim is received, or if the claim does not appear otherwise cognizable under article 139, UCMJ, the SPCMCA may refer it for legal review (see subpara *g* below) within four working days of receipt. If after legal review, the SPCMCA determines that the claim is not cognizable, final action may be taken disapproving the claim (see subpara *h* below) without appointing an IO.

*e. Expediting payment through Personnel Claims Act and Foreign Claims Act procedures.* When assessment action on a particular claim will be unduly delayed, the claims office may consider the claim under the Personnel Claims Act, 31 USC 3721, and chapter 11 of this regulation, or under the Foreign Claims Act, 10 USC 2734, and chapter 10 of this regulation, as long as it is otherwise cognizable under that authority. If the article 139 claim is later successful, the claims office will inform the claimant of their obligation to repay to the Government any overpayment received under these statutes (see subpara 11-3c(3)).

*f. Action by the investigating officer.* The IO will notify the soldier against whom the claim is made.

(1) If the soldier wishes to make voluntary restitution, the IO may, with the SPCMCA's concurrence, delay proceedings until the end of the next pay period to permit restitution. If the soldier makes payment to the claimant's full satisfaction, the SPCMCA will dismiss the claim.

(2) In the absence of full restitution, the IO will determine whether the claim is cognizable and meritorious under the provisions of article 139, UCMJ, and this chapter, and the amount to be assessed against each offender. This amount will be reduced by any restitution the claimant accepts from an offender in partial satisfaction. Within 10 working days or such time as the SPCMCA may determine, the IO will submit written findings and recommendations to the SPCMCA.

(3) If the soldier is absent without leave and cannot be notified, a claims office may process the article 139 claim in the soldier's absence. If an assessment is approved, forward a copy of the claim and memorandum authorizing pay assessment by transmittal letter to the servicing Defense Accounting Office (DAO) for offset against the soldier's pay. In the event the soldier is dropped from the rolls, the servicing DAO will forward the assessment documents to Commander, Defense Finance and Accounting Services, ATTN: Military Pay Operations, Indianapolis, Indiana 46249.

*g. Legal review.* The SPCMCA will refer the claim for legal review to the servicing legal office upon either completion of the IO's report or the SPCMCA's determination that the claim is not cognizable (see subpara *d*(2) above).

(1) Within five working days or such time as the SPCMCA determines, that office will furnish a written opinion as to—

(a) Whether the claim is cognizable under the provisions of article 139, UCMJ, and this chapter.

(b) Whether the findings and recommendations are supported by a preponderance of the evidence.

(c) Whether the investigation substantially complies with the procedural requirements of article 139, UCMJ; this chapter; DA Pam 27-162, chapter 9; and AR 15-6, chapter 4.

(d) Whether the claim is clearly not cognizable (see subpara *d*(2) above) and final denial action can be taken without appointing an IO.

(2) If the IO's recommended assessment does not exceed \$5,000, the CJA or claims attorney will, upon legal review, forward the claim to the SPCMCA for final action.

(3) If the IO's recommended assessment is more than \$5,000, the CJA or claims attorney will, upon legal review, forward the claims file to the head of the ACO, who will also conduct a legal review within five working days (unless the ACO is the same office that conducted the legal review for the SPCMCA).

(a) If the recommended assessment does not exceed \$10,000, the head of the ACO will forward the claims file to the GCMCA for final action.

(b) If the recommended assessment exceeds \$10,000, the head of the ACO will forward the claims file to the GCMCA for approval of an assessment up to \$10,000 and for a recommendation of an additional assessment. The head of the ACO will then forward the claims file and the GCMCA's recommendation to the Commander, USARCS, for approval.

*h. Final action.* After consulting with the legal advisor, the approval authority will disapprove or approve the claim in an amount equal to, or less than, the amount recommended by the IO, up to the amount of their assessment limitation. The approval authority will notify the claimant and any soldier subject to that officer's jurisdiction, of the determination and the right to request reconsideration (see para 9-8). A copy of the IO's findings and recommendation will be enclosed with the notice. The approval authority will then suspend action on the claim for 10 working days pending receipt of a request for reconsideration, unless the approval authority determines that this delay will result in substantial injustice. If after this period the approval authority determines that an assessment is still warranted, the approval authority will direct the appropriate DAO to withhold such amount from the soldier's pay account (see subpara 9-6a). For any soldier not subject to the approval authority's jurisdiction, the approval authority will forward the claim to that commander who does exercise SPCMCA jurisdiction over the soldier for assessment.

*i. Assessment.* Subject to any limitations set forth in appropriate regulations, the servicing DAO will withhold the amount directed by the approval authority and pay it to the claimant. The assessment is not subject to appeal and is conclusive on any finance officer. If the servicing DAO cannot withhold the required amount because it does not have custody of the soldier's pay record, the record is missing, or the soldier is in a no pay due status, that office will promptly notify the approval authority of this fact in writing.

*j. Post settlement action.* After action on the claim is completed, the claims office servicing the command which took final action will retain the original claim file and forward a complete copy of the claim file to the SPCMCA.

*k. Remission of indebtedness.* 10 USC 4837(d), which authorizes the remission and cancellation of indebtedness of an enlisted person to the United States or its instrumentalities, is not applicable and may not be used to remit and cancel indebtedness determined as a result of action under article 139, UCMJ.

## **9-8. Reconsideration**

*a. General.* Although article 139, UCMJ, does not provide for a right of appeal, either the claimant or a soldier whose pay is assessed may request the approval authority (SPCMCA or GCMCA, depending on the amount assessed) or successor in command to reconsider the action. Either party must submit such a request for reconsideration in writing and clearly state the factual or legal basis for the relief requested. The approval authority may direct that the matter be reinvestigated.

*b. Reconsideration by the original approval authority.* The original approval authority may reconsider the action at any time while holding that position, regardless of whether a soldier whose pay was assessed has been transferred. The original approval authority may modify the action if it was incorrect, subject to subparagraph 9-8d. However, the approval authority should modify the action only because of fraud, substantial new evidence, errors in calculation, or mistake of law.

c. *Reconsideration by a successor in command.* Subject to subparagraph 9-8d, a successor in command may modify an action only because of fraud, substantial new evidence, errors in calculation, or mistake of law apparent on the face of the record.

d. *Legal review and action.* Prior to modifying the original action, the approval authority will have the servicing claims office render a legal opinion and fully explain the basis for modification as part of the file. If a return of assessed pay is deemed appropriate, the approval authority should request the claimant to return the money, setting forth the basis for the request. There is no authority for repayment from appropriated funds.

e. *Disposition of files.* After completing action on reconsideration, the approval authority will forward the reconsideration action to the servicing claims office, which will then file the action per subparagraph 9-7h.

## **9-9. Additional claims judge advocate and claims attorney responsibilities**

In addition to the duties set forth in this chapter, the CJA or claims attorney is responsible for forwarding copies of completed article 139 actions to USARCS, maintaining a log, monitoring the time requirements of pending article 139 actions, and publicizing the article 139 program to commanders, soldiers, and the community.

# **Chapter 10 Foreign Claims Act**

## **Section I General**

### **10-1. Statutory authority**

The statutory authority for this chapter is the Act of 10 August 1956, 10 USC 2734 (70 Stat. 154), commonly referred to as the Foreign Claims Act (FCA), as amended by PL 86-223, 1 September 1959 (73 Stat. 453); PL 86-411, 8 April 1960 (74 Stat. 16); PL 90-521, 26 September 1968 (82 Stat. 874); PL 91-312, 8 July 1970 (84 Stat. 412); PL 93-336, 8 July 1974 (88 Stat. 292); PL 96-513, Title V, Section 511 (95), 12 December 1980 (94 Stat. 2928).

### **10-2. Scope**

a. *Application.* This chapter, which is applicable outside the United States, its commonwealths, territories and possessions, including areas under the jurisdiction of the United States, implements the FCA and prescribes the substantive basis and special procedural requirements for settlement of claims of inhabitants of a foreign country, or of a foreign country or a political subdivision thereof, against the United States for personal injury, death, or property damage caused by service members or civilian employees, or claims that arise incident to noncombat activities of the Armed Forces.

b. *Effect of Military Claims Act.* A Military Claims Act (MCA) claim may be settled under the FCA only if the claimant has been determined to be an inhabitant of a foreign country at the time of the incident. However, in a wrongful death claim, only the decedent need have been an inhabitant of a foreign country (see para 3-2d).

c. *Effect of Army Maritime Claims Settlement Act.* A maritime claim may be settled under the FCA only with permission of the Commander, USARCS.

### **10-3. Claims payable**

a. A claim for death, personal injury, or loss of or damage to property may be allowed under this chapter if the damage alleged results from noncombat activity or a negligent or wrongful act or omission of soldiers or civilian employees of the U.S. Armed Forces, as enumerated in paragraph 2-2(c)(4), regardless of whether the act or omission was made within the scope of their employment. This includes non-U.S. citizen employees recruited elsewhere but employed in a country of which they are not a citizen. However, a claim generated by non-U.S. citizen employees in the country in

which they were recruited and are employed, will be payable only if the act or omission was made in the scope of employment. However, claims arising from the operation of U.S. Armed Forces vehicles or other equipment by such employees may be paid, even though the employees are not acting within the scope of their employment, provided the employer or owner of the vehicle or other equipment would be liable under local law in the circumstances involved.

b. Claims generated by officers or civilian employees of the American Battle Monuments Commission, acting within the scope of employment, will be paid from American Battle Monuments Commission appropriations.

c. Claims for the loss of, or damage to, property that may be settled under this chapter include the following:

(1) Real property used and occupied under lease, express, implied or otherwise.

(2) Personal property bailed to the Government under an agreement, express or implied, unless the owner has expressly assumed the risk of damage or loss.

### **10-4. Claims not payable**

A claim is not payable if it—

a. Results wholly from the negligent or wrongful act of the claimant or agent.

b. Is purely contractual in nature.

c. Arises from private or domestic obligations as distinguished from Government transactions.

d. Is based solely on compassionate grounds.

e. Is a bastardy claim.

f. Is for any item, the acquisition, possession, or transportation of which is in violation of DA directives, such as illegal war trophies.

g. Is for rent, damage, or other payments involving the acquisition, use, possession, or disposition of real property or interests therein by and for the DA, except as authorized by paragraph 10-3c(1).

h. Is not in the best interest of the United States, is contrary to public policy, or otherwise contrary to the basic intent of the governing statute (10 USC 2734); for example, claims for property loss or damage, or personal injury or death caused by inhabitants of unfriendly foreign countries or by individuals considered to be unfriendly to the United States. When a claim is considered not payable for the reasons stated in this paragraph, it will be forwarded for appropriate action to the Commander, USARCS, with the recommendations of the responsible claims office.

i. Is presented by a national, or a corporation controlled by a national, of a country at war or engaged in armed conflict with the United States, or any country allied with such enemy country unless the appropriate settlement authority determines that the claimant is and, at the time of the incident, was friendly to the United States. A prisoner of war or an interned enemy alien is not excluded from filing a claim for damage, loss, or destruction of personal property within the Federal Government's custody if the claim is otherwise payable.

j. Is for damages or injury, the claim for which a receiving State should adjudicate and pay pursuant to an international agreement subject to waiver by the Commander, USARCS. See DA Pam 27-162, paragraph 3-4a, for a discussion of the conditions of waiver.

k. Is listed in paragraph 2-39d, except for the exclusions listed in subparagraphs 2-39d(5), (8), and (11). Additionally, the exclusions set forth in subparagraphs 2-39d(1) and (2) do not apply to a claim arising incident to noncombat activities.

l. Is brought by a subrogee.

m. Is covered by insurance on the involved U.S. Armed Forces' vehicle or the tortfeasor's POV, in accordance with requirements of a foreign country, unless the claim exceeds the coverage or the insurer is insolvent. See subparagraph 10-5c.

n. Is payable under chapters 3 or 11.

### **10-5. Applicable law**

a. In determining an appropriate award, apply the law and custom of the country in which the incident occurred to determine which elements of damage are payable and which individuals are

entitled to compensation. However, where the claimant is an inhabitant of another foreign country and only temporarily within the country in which the incident occurred, the quantum of certain elements of damages, such as lost wages and future medical care, may be calculated based on the law and economic conditions in the country of the claimant's permanent residence. Punitive damages and interest will not be allowed. Court costs, bail, interest, convenience, or expenses in connection with the claim's preparation and presentation are not allowed.

b. The guidance set forth in paragraph 3-5*b* through *d* as to allowable elements of damages is generally applicable. Where moral damages, as defined in DA Pamphlet 27-162, paragraph 2-74*c*, are permitted, such damages are payable. The rules on contributory or comparative negligence, joint and several liability, and collateral source payments, set forth in paragraph 3-5*a*(3) of this publication, are applicable.

c. Deductions for insurance.

(1) Insurance coverage recovered or recoverable will be deducted from any award. In that regard, every effort will be made to monitor the insurance aspect of the case and encourage direct settlement between the claimant and the insurer.

(2) When efforts under subparagraph (1) above are of no avail, or when it otherwise is determined that an insurance settlement will not be reasonably available for application to the award, no award will be made until the Commander, USARCS, has first granted consent. In such cases, an assignment of the insured's rights against the insurer will be obtained and, in appropriate cases, reimbursement action will be instituted against the insurer under applicable procedures.

(3) If an insurance settlement is not available due to the insurer's insolvency or bankruptcy, a report on the bankruptcy will be forwarded to the Commander, USARCS, without delay, setting forth all pertinent information, including the alleged reasons for the bankruptcy and the facts concerning the licensing of the insurer.

## **Section II**

### **Foreign Claims Commissions**

#### **10-6. Appointment and functions**

a. Claims cognizable under this chapter will be referred to a foreign claims commission (FCC) for processing, regardless of the amount claimed. The senior Judge Advocate (JA) of a command having a command claims service will appoint necessary FCCs to act on claims arising within his or her geographical area of jurisdiction, and on claims arising in another geographical area that have been transferred by agreement between the commanders involved. The senior JA may delegate this authority to the commander or chief of the command claims service.

b. The Commander, USARCS, will appoint all other FCCs to act on all other claims, regardless of where such claims arose. FCCs appointed by the Commander, USARCS, at units based in CONUS, may act on any claim arising out of such unit's operations. Any FCC operating in or adjudicating claims arising out of a geographical area within a command claims service's jurisdiction will comply with that service's legal and procedural rules.

c. An FCC may operate as an integral part of a command claims service that determines the cases to be assigned to it, furnish necessary administrative services, and establish and maintain its records. Where an FCC does not operate as part of a command claims service, it may operate as part of the office of a Division, Corps or higher command SJA, which will perform the foregoing functions.

d. An appointing authority may relieve an FCC whom he or she has appointed, forwarding one copy of each order addressing an FCC's appointment, relief, or change of responsibility to the Commander, USARCS. Upon receipt of an initial appointing order, the Commander, USARCS, will assign an office code number to the FCC. Without such a number, the FCC has no authority to approve or pay claims.

e. Normally, the FCC is responsible for the investigation of all claims referred to it, using both the procedures set forth in chapter 2

and any local procedures established by the appointing authority or command claims service responsible for the geographical area in which the claim arose. Chiefs of a command claims service may request assistance on claims investigation within their geographical areas from units or organizations other than the FCC. The Commander, USARCS, may make the same request for any claim referred to an FCC appointed under his or her authority.

f. When an FCC intends to deny a claim or offer an award less than the amount claimed, it will notify the claimant, the claimant's authorized agent, or legal representative, in writing, of intended action on the claim and the legal and factual bases for that action. This notice serves to give the claimant an opportunity to request reconsideration of the FCC action and state the reasons for the request before final action is taken on the claim. When the FCC intends to award the amount claimed or recommend an award equal to the amount claimed to a higher authority, this procedure is not necessary.

(1) This notice should be given at least 30 days before the FCC takes final action, except on small claims processed pursuant to paragraph 2-17.

(2) If the FCC proposes a partial award, a settlement agreement should be enclosed with the notice. Claimants will be advised that they may either accept the FCC action by returning the signed settlement agreement or, if dissatisfied with the FCC's action, they may submit a request for reconsideration stating the factual or legal reasons why they believe the FCC's proposed action is incorrect.

(3) An FCC may alter its initial decision based on the claimant's response or proceed with the intended action. If the claimant's response raises a general policy issue, the FCC may request an advisory opinion from the Commander, USARCS, while retaining the claim for final action at its level.

(4) Upon completion of its evaluation of the claimant's response, the FCC will notify the claimant of its final decision and advise the claimant that its action is final and conclusive as a matter of law (10 USC 2735), unless the final decision is a recommendation for payment above its authority. In that case, the FCC will forward any response submitted by the claimant along with its claims memorandum of opinion to the approval authority, and will notify the claimant accordingly.

(5) When an FCC determines that a claim is valued at more than \$50,000 or all claims arising out of a single incident are valued at more than \$100,000, the file will be transferred to the Commander, USARCS, for further action. See subparagraph 10-9*d*(2). Upon request of the Commander, USARCS, the FCC may negotiate a settlement, the amount of which exceeds the FCC's authority; however, approval by a higher authority is required.

(6) Every reasonable effort should be made to negotiate a mutually agreeable settlement on meritorious claims. When an agreement can be reached, the notice and response provisions above are not necessary. If the FCC recommends an award in excess of its monetary authority, the settlement agreement should indicate that its recommendation is contingent upon approval by higher authority.

#### **10-7. Composition**

a. Normally, an FCC will be composed of either one or three members. Alternate members of three-member FCCs may be appointed when circumstances require, and may be substituted for regular members on specific cases by order of the appointing authority. The appointing orders will clearly designate the president of a three-member FCC. Two members of a three-member FCC will constitute a quorum, and the FCC's decision will be determined by majority vote.

b. Upon approval by the Commander, USARCS, the membership may be composed of one or more members of another uniformed service. If another service has single-service responsibility over the foreign country in which the claim arose, that service is responsible for the claim. If requested, the Commander, USARCS, may furnish a JAG officer or claims attorney to be a member of another service's FCC.

#### 10-8. Qualification of members

Normally, a member of an FCC will be either a commissioned officer or a claims attorney. At least two members of a three-member FCC must be JAs or claims attorneys. In exigent circumstances, a qualified non-lawyer employee of the Armed Forces may be appointed to an FCC, subject to prior approval by the Commander, USARCS. Such approval may be granted only upon a showing of the employee's status and qualifications and adequate justification for such appointment (for example: lack of legally qualified personnel). The FCC will be limited to employees who are citizens of the United States. An officer, claims attorney, or employee of another armed force will be appointed a member of an Army FCC only if approved by the Commander, USARCS.

#### 10-9. Settlement authority

a. In order to determine whether the claim will be considered by a one-member or three-member FCC, the claimed amount will be converted to the U.S. dollar equivalent (based on the annual Foreign Currency Fluctuation Account exchange rate, where applicable). However, the FCC's jurisdiction to approve is determined by the conversion rate on the date of final action. Accordingly, if the value of the U.S. dollar has increased, the FCC must forward the recommendation to a higher authority, as appropriate.

b. Payment will be made in the currency of the country in which the incident occurred or in which the claimant resided at the time of the incident, unless the claimant requests payment in U.S. dollars or another currency and such request is approved by the Commander, USARCS. However, if the claimant resides in another foreign country at the time of payment, payment in an amount equivalent to that which would have been paid under the preceding sentence may be made in the currency of that third country without the approval of the Commander, USARCS.

c. Unless otherwise restricted by the appointing authority, a one-member FCC who is a JA or a claims attorney may consider and pay claims presented in any amount provided a mutually agreed settlement may be reached in an amount not exceeding \$15,000, or disapprove any claim presented in an amount not exceeding \$15,000. Any other one-member FCC may consider and pay, in full or in part, claims presented in an amount not exceeding \$2,500 that it considers meritorious.

d. A three-member FCC, unless otherwise restricted by the appointing authority, may take the following actions on a claim that is properly before it:

(1) *Disapprove a claim presented in any amount.* After it takes final action and disapproves a claim presented in any amount over \$50,000, the FCC will forward to the appointing authority the written notice to the claimant required by subparagraph 10-6f, any response from the claimant, and its notice of final action on the claim.

(2) *Approve and pay meritorious claims.* A claim that the FCC has adjudicated as meritorious, in an amount not exceeding \$50,000, may be paid in full or in part. The FCC will forward claims valued in excess of \$50,000 or incidents from which multiple claims may arise valued at more than \$100,000, to the Commander, USARCS, through the appointing authority, for further action along with a claim memorandum of opinion.

e. TJAG, TAJAG and the Commander, USARCS, or his or her designee serving at USARCS, may approve and pay, in whole or in part, any claims as long as the amount of the award does not exceed \$100,000, may disapprove any claim, regardless of either the amount claimed or the recommendation of the FCC forwarding the claim; or, if a claim is forwarded to USARCS for approval of payment in excess of \$50,000, refer the claim back to the FCC or another FCC for further action.

f. Payments in excess of \$100,000 will be approved by the Secretary of the Army, the Army General Counsel as the Secretary's designee, or other designee of the Secretary.

g. Following approval where required and receipt of an agreement by the claimant accepting the specific sum awarded by the FCC, the claim will be processed for payment in the appropriate

currency. The first \$100,000 of any award will be paid from Army claims funds. The excess will be reported to the Financial Management Service, Department of Treasury, with the documents listed in DA Pam 27-162, paragraph 2-101.

h. If the appellate authority upholds a final offer or authorizes an award on appeal from a denial of a claim, the notice of the appellate authority's action will inform the claimant that he or she must accept the award within 180 days of the date of mailing of the notice of the appellate authority's action or the award will be withdrawn, the claim will be deemed denied, and the file will be closed without future recourse.

i. The chief of an overseas command claims service may delegate to a one-member FCC the responsibility for the receipt, processing, and investigation of any claim, regardless of amount, except those required to be referred to a receiving State office for adjudication under the provisions of a treaty concerning the status of U.S. forces in the country in which the claim arose. If, after investigation, it appears that action by a three-member FCC is appropriate, the one-member FCC should send the claim to the three-member FCC with a complete investigation report, including a discussion of the applicable local law and a recommendation for disposition.

#### 10-10. Solatia payment

Payment of solatia in accordance with local custom as an expression of sympathy toward a victim or his or her family is common in some overseas commands. Such payments are not to be made from the Claims Expenditure Allowance. These payments are made from local operation and maintenance funds pursuant to directives established by the appropriate commander for the country concerned. This applies even where a command claims service is directed to administer the command's solatia program.

### Chapter 11 Personnel Claims and Related Recovery Actions

#### Section I General

##### 11-1. Authority

The Personnel Claims Act (PCA), 31 USC 3721, formerly 31 USC 240-243, as amended by PL 97-226, 96 Stat. 245, 28 July 1982 (the Act) and PL 100-565 (102 Stat. 2833), 31 October 1988; DODD 5515.10, 17 June 1965, with Change 1, 6 July 1965; and 31 USC 3711, formerly 31 USC 951-953, provides the authority for the settlement of claims for loss, damage, or destruction of personal property of military personnel or civilian employees incident to their service.

##### 11-2. Delegation of authority

###### a. Settlement authority.

(1) The following are delegated authority to pay up to the statutory limit, currently \$40,000 (or \$100,000 for emergency evacuations or extraordinary circumstances pursuant to 31 USC 3721(b)(1)), in settlement of claims, and to disapprove claims regardless of the amount claimed:

(a) The Judge Advocate General (TJAG).

(b) The Assistant Judge Advocate General (TAJAG).

(c) The Commander, USARCS, or the Chief, Personnel Claims and Recovery Division, USARCS.

(2) The following are delegated authority to pay up to \$25,000 in settlement of claims and to disapprove claims regardless of the amount claimed:

(a) The Judge Advocate (JA) or Staff Judge Advocate (SJA) or the chief of a command claims service.

(b) Heads of area claims offices (ACO) designated under paragraph 1-5e (subject to the provisions of subpara 1-5g).

b. *Approval authority.* Heads of claims processing offices (CPO) with approval authority are delegated authority to pay up to \$10,000 in settlement of claims.

c. *Office code.* Authority delegated by this paragraph will not be exercised unless the claims settlement or approval authority has been assigned an office code.

d. *US Army Corps of Engineers area claims offices.* U.S. Army Corps of Engineers (USACE) ACOs are not delegated approval or settlement authority under this chapter and will forward any such claims to the ACO for the geographic area in which the USACE office is located. (See DA Pam 27-162, paragraph 11-2, concerning claims of USACE personnel incident to travel to or from Saudi Arabia, Kuwait, Bahrain, Sudan, Egypt or Morocco.)

e. *When adjudicated claim exceeds claims office jurisdiction.* If the adjudicated amount of a claim exceeds the monetary jurisdiction of the claims office, the CJA or claims attorney will approve and pay the claim up to that office's delegated authority, and forward it with all documentation (including computer disk, paper screen, and memorandum of opinion) to the next higher claims authority for additional payment.

f. *Further delegation.* Pursuant to subparagraph 1-5f of this publication, the authorities named in subparagraphs a and b above may further delegate, in writing, any portion of, or all, their monetary approval authority to a subordinate JA or claims attorney in their service or office. The authority to act upon requests for reconsideration, waivers of the maximum allowable, and to disapprove claims will not be delegated. In this context, "disapproval" refers to disapproval of a claim in its entirety, not simply disapproval of a single line item (unless the claim has only one line item).

### 11-3. Scope

a. This chapter prescribes the substantive bases and special procedural rules for the administrative settlement of claims against the United States submitted by Active Army, Army National Guard (ARNG), and United States Army Reserve (USAR) personnel and Department of Defense (DOD) or Department of Army (DA) civilian employees for damage to, or loss of, personal property incident to their service. This chapter also sets forth procedures for administrative recovery from third parties responsible for the loss or damage to, or destruction of, such personal property. The underlying Act is a gratuitous payment statute; claims thereunder are not based in tort even though some tort concepts are used in the adjudication of claims arising under this chapter. Further, the Act does not make the United States a total insurer of the personal property of proper claimants.

b. The maximum amount that may be paid for any loss or damage arising from a single incident is set forth in the Personnel Claims Act, as amended. Currently, this maximum amount is \$40,000 (or \$100,000 for loss or damage arising from an emergency evacuation or other extraordinary circumstances). The current maximum limit of \$40,000 is specifically limited to losses of personal property occurring after 31 October 1988, and to losses resulting from evacuations, extraordinary circumstances, or hostile acts directed against the United States or its officers and employees. (A maximum limit of \$25,000 is applicable to losses of personal property occurring after 28 July 1982 and before 1 November 1988.) The current maximum limit of \$100,000 for loss or damage arising from emergency evacuations or extraordinary circumstances is fully retroactive and applies to claims arising before, on, or after 12 February 1996 (the enactment date of the 1996 amendment to the Personnel Claims Act). This includes claims settled prior to 12 February 1996, provided—

(1) A request for reconsideration of the claim is presented, in writing, on or before 12 February 1998.

(2) The claimant has proof that an appropriate settlement or approval authority determined the amount of damage or loss prior to 12 February 1996.

(3) The total of all amounts paid in settlement of the claim does not exceed \$100,000.

c. Any claim within the scope of this chapter that otherwise would be cognizable under chapters 3, 4, 5, 6, 8 or 10 will first be considered under this chapter.

(1) If not payable under this chapter, consider the claim under the

other chapters prior to any disapproval. Give particular attention to the nature of the claim; many alleged "unusual occurrences" are actually torts, either by employees or by individuals in their private capacities.

(2) If a claim cognizable under this chapter arises from an incident resulting in personal injury, no payment or emergency partial payment will be made under this chapter until the incident has been investigated in accordance with chapter 2, section IV. The Commander, USARCS, or Chief, Personnel Claims and Recovery Division, USARCS, may waive the requirement. Prior to payment, the investigation must establish that the incident was not caused by the negligence of the claimant or an agent of the claimant.

(3) Any claim within the scope of this chapter that is also cognizable under Article 139 will first be considered under chapter 9. If settlement of the Article 139 claim will be unduly protracted, the claim may be settled under this chapter and the claimant advised to repay any overpayment if payment is later received under the provisions of chapter 9.

(4) Any claims of service members that are not payable under this chapter should be considered under chapter 3, if they involve any allegation of a tort.

d. Any claim cognizable under this chapter that is primarily the result of the fault or negligence of a Government contractor other than a common carrier or warehouse firm will first be referred to the contractor or his or her insurer for settlement in accordance with DA Pam 27-162, subparagraph 11-5a.

### 11-4. Claimants

a. A claim may be presented under this chapter only by the following personnel:

(1) A member of the Active Army.

(2) A member of the USAR or the ARNG performing inactive-duty training or active service.

(3) A civilian employee of DA; a civilian employee of the ARNG funded under 32 USC 709; a civilian employee of the DOD who is not an employee of the Department of the Navy or the Department of the Air Force; or a continental wage scale, local wage scale, and other foreign national local civilian employee. (See DODD 5515.10.) However, the claims of DOD dependent school teachers and Defense Commissary Agency (DECA) civilian employees will be settled by the Service operating the installation where that teacher or DECA employee is employed.

(4) The authorized agent or legal representative of any member of a military component or civilian employee listed in subparagraphs (1) through (3). Additionally, a proper claimant's spouse may file a claim on that claimant's behalf if the spouse provides to the field claims office a written and dated document signed by the proper claimant authorizing the spouse to file the claim. However, any claim presented by a claims preparation service or other hired agent must be signed and ratified by the proper claimant to preclude assignment of claims, regardless of whether the claimant has executed a power of attorney.

(5) The survivors of any member of a military component or civilian employee listed in subparagraphs (1) through (3) in the following order of precedence:

(a) Spouse.

(b) Child or children.

(c) Father or mother, or both.

(d) Brothers or sisters, or both.

b. Claims of civilian employees of nonappropriated fund (NAF) activities for damage to or loss of personal property incident to their service will be processed in accordance with this chapter and chapter 12, with payment made only from NAFs.

c. A member of another U.S. Armed Force may present a claim to an Army claims office for loss of, or damage to, personal property incident to his or her service. Any such claim will be investigated and processed short of adjudication under the provisions of this chapter, and forwarded for settlement to the nearest legal office of the service concerned. The Commander, USARCS, may enter into an agreement with the other Services to permit more extensive claims processing.

*d. Subrogees, assignees, conditional vendors, and similar third parties are not proper claimants under this chapter, and their claims are barred from payment. Further, claims for losses of subrogees and similar third parties are barred from consideration or payment under other chapters when the property owner could have presented a cognizable claim for loss under the provisions of this chapter.*

*e. Personnel who do not fall within one of the categories listed in paragraph *a* above (such as spouses of proper claimants without a power of attorney or written authorization, Red Cross employees, foreign military personnel, United Services Organization personnel, or employees of Government contractors, including technical representatives) are not proper claimants under this chapter.*

*f. Claimants who are absent without leave (AWOL) will have any pending claim denied once they are dropped from the rolls. Upon return from AWOL (including dropped from the rolls), the soldier may request reconsideration pursuant to DA Pam 27-162, subparagraph 11-4j.*

#### **11-5. Claims payable**

The following are nonexclusive examples of categories of damage to, or loss of, property that may be considered by claims approval and settlement authorities as having been sustained incident to service. Note that a loss unconnected with the performance of duty, particularly a loss occurring outside of normal duty hours, is normally not incident to a civilian employee's service, although the same loss might be deemed incident to a soldier's service. This is particularly true if the civilian employee is a local foreign national employee. A claims approval or settlement authority will ask the Chief, Personnel Claims and Recovery Division, USARCS, for an advance opinion prior to adjudicating a claim that is deemed incident to service, but does not fall within one of the following categories:

*a. Contractor caused losses.* As noted, contractor or contractor employee caused losses may be incident to service but should be paid only after seeking compensation from the contractor.

*b. Tangible personal property.* The PCA authorizes payment for damage to tangible personal property only. Payment for real property damage or other types of consequential or incidental damages is not authorized.

*c. Extraordinary hazards.* The PCA compensates for losses from quarters, loss or damage to clothing and other items being worn, and most vehicle losses only if caused by "fire, flood, hurricane, or other unusual occurrence, or by theft or vandalism."

*d. Quarters or other authorized places.* Damage to, or loss of, property by fire, flood, hurricane, or other unusual occurrence, or by theft or vandalism may be considered, when it occurs at—

(1) Quarters, wherever situated, that are assigned to the claimant or otherwise provided in kind by the Government.

(2) Quarters not located in a State or the District of Columbia, that are occupied by the claimant in compliance with competent authority but are neither assigned to the claimant nor otherwise provided in kind by the Government. However, a claim is not cognizable when the claimant is—

(a) A civilian employee who is a local inhabitant.

(b) A U.S. citizen hired as a civilian employee while residing abroad or after moving to a foreign country as part of the household of a person who is not a proper party claimant.

(c) A family member not residing in a State or the District of Columbia while the soldier is stationed in a different country.

(d) A local inhabitant of a U.S. territory who is in that territory at the time of a loss when he or she is in the ARNG either on full-time National Guard duty (FTNGD) or on active duty under Title 10, or in the USAR on active duty for any reason.

(3) Any place of lodging (such as a hotel, motel, guest house, transit billet or other place), wherever situated, when occupied by the claimant while in the performance of temporary duty or similar authorized military assignment of a temporary nature.

(4) Any warehouse, office, hospital, baggage holding area, or other place authorized or apparently authorized by the Government for the reception or storage of personal property.

*e. Transportation losses.* Damage to, or loss of, property incident to transportation or storage pursuant to orders, in connection with travel under orders, or in performance of military duty may be considered, if not the result of a mechanical or structural defect. This includes property in the custody of the following—

(1) A common or contract carrier or any other commercial concern, either pursuant to a Government Bill of Lading (GBL), Government contract, or the commuted rate method (Joint Travel Regulation (JTR) Vol II, paragraph C8001, section 4b(1)). With respect to mobile homes, it is the owner's responsibility to place the mobile home and its tires, tubes, frame, and other parts in fit condition and to load the mobile home to withstand the stress of normal transportation, at his or her own expense, prior to shipment.

(2) An agent or agency of the Government, to include property mailed at Government expense in the custody of the U.S. Postal Service.

(3) The claimant or appropriate personnel while the claimant is traveling in a private or public vessel, vehicle, aircraft, or other conveyance in performance of military duty.

(4) The claimant or appropriate personnel while the claimant is traveling aboard a military vessel, aircraft, or vehicle in performance of military duty or pursuant to orders authorizing travel, including travel pursuant to leave orders on a space available basis.

*f. Losses due to public service, enemy action, evacuation, or hostile acts.* Damage to, or loss of, property may be considered which is a direct result of—

(1) Enemy action, or threat thereof, combat, guerrilla, or other belligerent activities, whether or not the United States was involved; or unjust confiscation by a foreign power or its nationals of property belonging to soldiers or U.S. national civilian employees.

(2) Acts of mob violence, terrorist attacks, or other hostile acts directed against the United States or its officers and employees.

(3) Action by the claimant in an attempt to quiet a civil disturbance or alleviate a public disaster.

(4) Efforts by the claimant to save a human life or Government property.

(5) Evacuation from a foreign country on the recommendation or order of competent authority. This subsection provides payment for property belonging to soldiers and civilian employees and their command-sponsored family members, with entitlement to shipment at Government expense, which is abandoned during an evacuation and not recovered, or damaged by an incident of political unrest or hostile act prompting or following such evacuation.

*g. Loss of money delivered to a Government agent.* Loss of funds neither applied as directed by the owner nor returned may be considered when the funds were delivered to, and accepted by, Government personnel authorized or apparently authorized to receive them for such purposes as safekeeping; deposit in savings deposit program; transmission by personal transfer account; purchase of U.S. bonds or postal money orders; or conversion into military payment orders, Government checks, or into another kind of currency.

*h. Vehicle losses.* Vehicles are defined to include automobiles, motorcycles, mopeds, utility trailers, camping trailers, trucks with mounted camper bodies, motor homes, boats, boat trailers and aircraft. For purposes of this paragraph, vehicles are also defined to include bicycles which, at the time of the loss are owned and being operated by a proper party claimant or are located at the claimant's quarters (as defined in subpara *d* above). Mobile homes and other property used as dwelling places are not considered vehicles. Damage to, or loss of, vehicles and property properly stored or contained therein may be considered when—

(1) Used in the performance of military duty, if such use was authorized or directed for the convenience of the Government and provided—

(a) The travel did not include commuting to or from the permanent place of duty.

(b) The loss or damage did not arise as a result of a mechanical or structural failure of the vehicle during such usage.

(2) Shipped to, from, or between an overseas area or areas at

Government expense in accordance with paragraph *b* above, provided the loss or damage did not arise as a result of mechanical or structural failure of the vehicle during such shipment.

(3) Located at quarters or place of lodging, as defined in paragraphs *d*(1), (2), and (3) above, or located on a military installation, provided that the loss or damage is caused by fire, flood, hurricane, or other unusual occurrence, or by theft or vandalism. For the purposes of this paragraph, the term “quarters” includes garages, carports, driveways, assigned parking spaces, and lots specifically provided and used for the purpose of parking at one’s quarters or other area normally used for parking while at quarters by the claimant and other occupants of the claimant’s building, or by the claimant’s neighbors. The term “military installation” is used broadly to describe any fixed land area, wherever situated, controlled and used by military activities or the DOD. For this category, there is a presumption that vehicle theft or vandalism does not occur on the military installation or at quarters and is generally not compensable. Claims for theft or vandalism to vehicles (including property located inside a vehicle) are only payable when a claimant proves that the theft or vandalism occurred while the vehicle was on the military installation or at quarters (for example: a military police report indicates broken glass from the window was found at the on-post parking lot where the vehicle was vandalized). A vehicle that is properly on the installation or at quarters should be presumed to be incident to service unless such a presumption would be unreasonable under the particular circumstances, such as visiting a fellow soldier on another installation while on leave.

(4) Located at areas on the military installation where the command has assumed responsibility for the security of the vehicle (for example, when a soldier is directed to park the vehicle in a specific area during a deployment and the Government provides security for the lot).

(5) Located off the military installation when the loss or damage is directly connected to the claimant’s service, provided the incident does not occur at quarters in a State or the District of Columbia that were not assigned or provided in kind by the Government.

(6) To the extent the provisions of this paragraph make vehicle loss claims payable, when they would not be payable under previous policy, such claims will be considered for payment only if the loss occurred after the effective date of this regulation.

*i. Clothing and articles being worn.* Damage to or loss of clothing and articles being worn while on a military installation or in the performance of military duty may be considered, provided such loss was caused by fire, flood, hurricane, or other unusual occurrence, or by theft.

*j. On-post robberies.* Claims for losses due to theft from the person on a military installation by the use of force, violence, or threat to do bodily harm may be considered. If cognizable under Article 139, the claims should be considered under chapter 9 of this publication.

*k. Personal property held as evidence.* Destruction of property held as evidence may be considered when the claimant is a victim of a crime and the destruction was not due to the claimant’s negligence. Deprivation of property held as evidence may be considered when, after taking all circumstances into consideration, the temporary loss of the property will work a grave hardship on a claimant who is a victim of a crime.

*l. Other claims payable.* The above listing is not exclusive. Other examples of payable incident to service claims are noted in DA Pam 27-162, paragraph 11-5.

#### 11-6. Claims not payable

The following are examples of types and categories of property losses for which compensation will not be allowed:

*a. Real property.* Damage to real property is not compensable. In determining whether an item is considered to be an item of personal property, as opposed to real property, normally, any movable item is considered personal property even if physically joined to the land.

*b. Property located at quarters.* Loss or damage to property

located at quarters within the United States that were occupied by the claimant but were neither assigned nor otherwise provided in kind by the Government, is not compensable.

*c. Intangible property.* Loss of property that has no extrinsic and marketable value but is merely representative or evidence of value, such as non-negotiable stock certificates, promissory notes, bonds, bills of lading, warehouse receipts, insurance policies, baggage checks, and bank books, is not compensable. Similarly, a claimant may not be compensated for the inability to use nonrefundable tickets or recover lease or utility deposits. Loss of a thesis, or other similar item, is compensable only to the extent of the out-of-pocket expenses incurred by the claimant in preparing the item such as the cost of the paper or other materials. No compensation is authorized for the time spent by the claimant in its preparation or for supposed literary value.

*d. Incidental expenses and consequential damages.* The Act and this chapter authorize payment for loss of, or damage to, personal property only. Except as provided in paragraph 11-15, consequential damages or other types of loss or incidental expenses (such as loss of use, interest, carrying charges, cost of lodging or food while awaiting arrival of shipment, attorney fees, telephone calls, cost of transporting claimant or family members, inconvenience, time spent in preparation of claim, or cost of insurance premiums) are not compensable.

*e. Property not reasonable or useful.* Loss of, or damage to, commercial property, such as articles acquired or held for sale or disposition by other commercial transactions on more than an occasional basis, or primarily for use in a private profession or business enterprise, is generally not compensable. This should be interpreted liberally in favor of the claimant.

*f. Fraud.* The head of an ACO may completely deny a claim that he or she determines to be tainted by fraud.

*g. Property lost or damaged as a result of claimant’s negligence.* Property damaged or lost, in whole or in part, as a result of any negligence or wrongful act of the claimant, the claimant’s spouse or family member, or any agent or employee of the claimant acting in the scope of employment, is not compensable. Negligence may be defined as failure to exercise the degree of care that a reasonable and prudent person would have exercised under the same circumstances.

*h. Property acquired, possessed, or transported unlawfully or in violation of local law or competent regulations or directives.* This includes loss or damage to vehicles not properly registered or insured in compliance with local law or competent regulations or directives as well as properly registered vehicles that were abandoned in violation of law or regulation. The head of an ACO may waive this provision and pay a claim if he or she determines that good cause existed as to why the claimant failed to comply with the local law, competent regulation, or competent directive.

*i. Enemy property or war trophies.* This includes property that, by regulation, directive, or order is declared inappropriate or unlawful for personal possession.

*j. Money.* Loss of money in any amount during shipment or storage with baggage or household goods is not compensable. This includes coin collections.

*k. Property in storage.* Loss or damage to property stored at a commercial facility for the convenience of the claimant and at his or her expense is not compensable.

*l. Other items not payable.* This listing is not exclusive. Other examples of items not reasonable or useful or otherwise not payable are found in DA Pam 27-162, paragraph 11-6.

#### 11-7. Time prescribed for filing

*a.* No claim may be paid under this chapter unless it is presented in writing within two years after it accrues. A claim is presented when it is received at a U.S. military establishment, not when it enters the mail. For purposes of this chapter, a claim accrues at the time of the incident causing the loss or damage, or at such time as the loss or damage is, or should have been, discovered by the claimant through the exercise of due diligence. In the case of multiple deliveries on the same GBL, the claim for each portion of the



shipment accrues when those items are delivered. The claim filed for the initial damage will be amended to reflect the subsequently claimed items. If personal property remains in storage after the expiration date of the legal entitlement to storage at Government expense, a claim normally accrues on such expiration date.

b. If a claim accrues in time of war or armed conflict in which the Armed Forces of the United States are engaged, or if such a war or armed conflict intervenes within two years after the claim accrues, and if good cause is shown, the claim may be presented not later than two years after the war or armed conflict is terminated. A claims office may telephonically obtain the authority to grant additional time to file a claim, from the Chief, Personnel Claims and Recovery Division. If good cause for delay in filing is not established, the intervention of war or armed conflict, in itself, will not permit payment of a claim presented later than two years after accrual. Pursuant to the provisions of PL 96-446 (94 Stat. 1967), 14 October 1980, periods of captivity are excluded in computing the two-year statute of limitations (SOL).

c. If a proper party claimant is notified that his or her personal property in nontemporary storage (NTS) has sustained partial damage, the SOL does not begin to run until the claimant has an opportunity to ascertain the extent of the loss, or the claimant's entitlement to Government shipment or storage expires, whichever occurs sooner. However, the claimant is expected to exercise due diligence in attempting to ascertain the extent of the loss. Moreover, when a proper party claimant is notified that his or her personal property in NTS at Government expense has sustained complete destruction or loss, the SOL begins to run when this notification is received.

#### **11-8. Form of claim**

a. Under this chapter, any written demand for compensation is a claim, even if no specific sum is mentioned nor supporting documentation provided. Claims personnel will date-stamp, log in, and consider as a personnel claim any writing received at a U.S. military establishment if it constitutes a demand for compensation for loss of, or damage to, personal property. Claims personnel will not return such writing to the claimant without action as "lacking documentation" and may only consider it abandoned in accordance with paragraph 13-3d of this publication and DA Pam 27-162, paragraph 11-10h. However, the claimant must complete and submit DD Form 1842 and DD Form 1844 (List of Property and Claims Analysis Chart) as a condition precedent to payment of the claim. Claimants will be required to complete only one DD Form 1842 and DD Form 1844 and to provide only one copy of supporting documentation.

b. A demand on carrier, warehouse firm, insurer, or other third party is not considered a claim against the United States. Submission of DD Form 1840-R (Notice of Loss or Damage) to the claims office does not constitute presentation of a claim. If, however, a claimant alleges that he or she filed a claim, and the evidence shows that within the two-year period, the claimant visited a claims office of one of the Armed Forces with an apparent desire to obtain compensation, it may be presumed, in absence of evidence to the contrary, that the claimant, in fact, submitted a claim.

#### **11-9. Presentation**

a. To constitute a filing under this regulation, a claim must be presented, in writing, to an agency of one of the military departments other than the National Guard or a Reserve Component. A claim must be in writing and should, if practicable, be submitted to the claims office serving the Army installation where the claimant is stationed, or nearest to the point where the loss or damage occurred, or where investigation of the facts and circumstances can most conveniently be made. ARNG and USAR personnel will not file claims with their unit but with the nearest Army installation. If submission in accordance with the foregoing is impracticable under the circumstances, the claim may be submitted, in writing, to the commander of any installation or establishment of the Armed Forces who will forward the claim to the appropriate Army claims office for processing. The Chief, Personnel Claims and Recovery Division,

may establish the locations at which to file claims in unusual circumstances, joint claims processing situations, or other situations in the best interest of claims processing.

b. The claimant is responsible for substantiating ownership or possession, the fact of loss or damage, and the value of property, especially for expensive items. The claimant is also responsible for promptly discovering and reporting loss whenever failure to do so would prejudice either effective investigation of the claim or effective recovery action from a third party. Failure to do so may result in reduction of the amount allowable or denial of the claim in accordance with subparagraph 11-21a.

### **Section II Evaluation, Adjudication, and Settlement of Claims**

#### **11-10. Policy**

a. The personnel claims program is a morale program designed to assist soldiers and civilian employees whose property has been lost or damaged incident to their service. To be effective, claims must be adjudicated fairly and promptly to maintain morale, prevent financial hardship, and ensure the integrity of the program. Claims approval and settlement authorities have discretion in administering this program to meet those objectives.

b. The small claims procedures applicable to claims that may be settled by payment of \$1,000 or less without extensive investigation should be used to the maximum extent feasible. When this procedure is used, every reasonable effort should be made to settle the claim within the shortest possible period, usually one working day. However, the small claims procedures should not be used when additional investigation is necessary to develop the facts required for an informed disposition of the claim regardless of the amount claimed.

c. Within the DA, personnel claims will not be transferred except as authorized by USARCS or a command claims service.

d. When it is necessary to disapprove a claim or to allow a sum less than the amount claimed, the claimant must be informed, either orally or in writing, of the factual or legal basis for the decision. The file must reflect that this explanation was provided to the claimant.

#### **11-11. Preliminary findings required**

Prior to allowing or recommending allowance of compensation for the loss, damage, or destruction of property, the approval or settlement authority will make the following findings:

a. The claimant is a proper party claimant.

b. The evidence substantiates the fact of ownership or possession of the personal property involved and the fact of loss, damage, or destruction as alleged.

c. The loss, damage, or destruction of the property involved was sustained incident to the claimant's military service or employment.

d. The type of property claimed and the amount or quantity claimed was reasonable or useful under the attendant circumstances for the claimant to have used or possessed incident to military service or employment.

e. There is no bar to the allowance of compensation for the type of property involved, or for the type of loss, damage, or destruction providing the basis of the claim.

f. The claimant certified that no part of the loss is covered by insurance. If private insurance covers any part of the loss, the claimant generally must first settle with the insurance company. See subparagraph 11-21b(5). (Coverage under most personal property insurance carried by service personnel includes items lost or missing, or items destroyed, or damaged by water, fire or vehicular accident while in custody of a public carrier. Such coverage typically does not cover property damaged or destroyed by handling.)

(1) When a claimant refuses to provide information on private insurance coverage, the CJA or claims attorney may assume, in the absence of evidence to the contrary, that the claimant had private insurance covering the entire loss, and disapprove the claim.

(2) If the face value of an applicable insurance policy is less than the total value of the loss (as determined by the insurer), or the

itemization by the insurer does not indicate the amount actually paid for each item but only its determination of the adjudicated value of each item, settlement will be determined by dividing the policy limit or total amount paid by the total insurance valuation (for example, divide a \$50,000 policy limit by a \$100,000 loss). That fraction will be applied on an item-by-item basis to allocate the actual amount paid by the insurer for each item. This method of calculation will be used regardless of the method the insurer used to determine its payment.

#### 11-12. Guides for computing amounts allowable

a. On claims for losses incident to service processed under this chapter or chapter 12, periodically, the Commander, USARCS, will publish an Allowance List-Depreciation Guide specifying rates of depreciation and maximum payments that apply to categories of property. (See DA Pam 27-162, figure 11-3.). The Allowance List-Depreciation Guide will be binding on all Army claims personnel. On claims for losses incident to service processed under this chapter or chapter 12, no payment will be made on an item or category of items in excess of the maximum payment in effect at the time the claim arose, except as provided in subparagraph 11-14b.

b. The Commander, USARCS, will promulgate additional guides, references, and tables to assist in computing allowable compensation under this chapter. (See Claims Reports presented in *The Army Lawyer*, which is published monthly and available to the public, and items published electronically through the Claims Forum on the Legal Automated Army-Wide System (LAAWS) Bulletin Board Service).

#### 11-13. Ownership or custody of property

Compensation may be allowed even though the property was not in the actual possession of the claimant at the time of the damage or loss. Compensation may also be allowed even though the property was not owned by the claimant, provided it was lawfully under his or her dominion and control. However, compensation will not be allowed for damage or loss to personal property transported to accommodate another, other than the claimant's family members, nor will compensation for damage or loss to a vehicle loaned to a claimant be allowed unless both the claimant and the owner are proper party claimants. A vehicle registered in the name of the claimant or a spouse is not deemed, as between them, to be loaned (see DA Pam 27-162, para 11-5h(5)). When a vehicle is subject to a lien, the vehicle is not deemed to be loaned merely because the title is in the name of the lienholder.

#### 11-14. Determination of compensation

a. A claim may be allowed only for the amount and quantity of personal property considered reasonable or useful for the claimant to have used or possessed under the attendant circumstances, incident to his or her service or employment. In determining the reasonableness or utility of types and quantities of property included in a claim cognizable under this chapter, an approval or settlement authority will give consideration to the claimant's living conditions, family size, social obligations, and need to have more than average quantities, as well as the circumstances attending acquisition or possession of the property and the manner of damage or loss.

b. The maximum amounts allowable for specific types and categories of personal property listed in The Allowance List-Depreciation Guide constitute a determination of amount or quantity deemed reasonable or useful. To avoid application of these maximum allowances, a soldier or civilian employee may obtain additional protection on shipments by requesting full replacement protection or increased value protection. The Commander, USARCS, and the Chief, Personnel Claims and Recovery Division, USARCS, may waive the maximum in a particular case for good cause shown. In addition, the head of an ACO or higher settlement authority may waive the maximum allowable in a particular case for good cause, if the claimant establishes the elements in subparagraphs (1) through (4) below. The head of the ACO must personally certify this by including a memorandum in the claims file, providing a written

explanation detailing the facts relied upon which constituted good cause and detailing how the claimant has established each one of the four elements below by clear and convincing evidence. This authority is non-delegable and must be exercised personally by the head of the ACO. The elements which must be established are—

(1) The property was not held for use in a business or for commercial purposes.

(2) The property was actually owned by the claimant.

(3) The property had the value claimed.

(4) The property was damaged or lost in the manner alleged.

c. Compensation allowable for an item of personal property will not exceed the actual value of the item at the time of its loss, damage, or destruction. Guidance on determining the base figure for actual value, using replacement costs, estimates, or the Table of Adjusted Dollar Value, is provided in DA Pam 27-162, paragraph 11-14f. Soldiers are permitted to replace items missing or destroyed during permanent change of station moves by ordering from the Overseas Post Exchange Catalog, even when ordering from this catalog is not otherwise permitted. Therefore, such items may be valued using this catalog.

d. In adjusting a base figure to determine actual value, standard yearly rates of depreciation have been established for the types and categories of items that have generally recognized periods of useful life; standard flat rates of depreciation have been established for certain kinds of items that decrease in value primarily as the result of the fact they are no longer new and unused, but which do not continue to depreciate on a yearly basis since they are not subject to fixed periods of useful life. (See Allowance List-Depreciation Guide, DA Pam 27-162, figure 11-3.) However, if personal inspection of damaged property indicates that it was in better than average condition prior to damage, a lesser rate of depreciation should be applied. Similarly, if the evidence indicates that an item was in poor condition at time of damage, a higher rate of depreciation is appropriate. Variations from the established rates of depreciation will be fully explained. The following rules are to be observed in computing the depreciation applicable to any item:

(1) Normally no depreciation is to be charged against goods during periods of storage. However, this does not mean that deductions cannot be taken for other reasons, such as a reduction in the market value of an item because of changes in style or obsolescence.

(2) Do not depreciate an item which is less than 6 months old (including an item subject to flat rate depreciation) except clothing and other rapidly depreciating articles that may be subject to considerable use in such a short period of time. Calculate yearly depreciation from the date an item is originally acquired to either the date of pickup (for shipment or storage claims), or to the date the property was lost or damaged (for other personnel claims). If the claimant acquired a used item, the claimant should use either the date the original owner acquired the item and the original purchase price, or the claimant's purchase price and date he or she purchased the item. Compute yearly depreciation in accordance with the Allowance List-Depreciation Guide.

(3) No item will be depreciated by more than 75 percent.

(4) No depreciation is charged against genuine antiques, objects of art, and collector's items, except for repair of portions thereof, such as upholstery, which requires periodic replacement or repair.

e. Compensation normally allowed for an item damaged beyond economic repair is the actual value at the time of destruction. However, if an item has not been totally destroyed and any part remains useful and has a salvage value, and that part is to be retained by the claimant, the allowance will be the value at time of destruction less the ascertained value of the salvageable part. If the claimant does not wish to retain any salvageable part of a destroyed item, he or she may be allowed the actual value at the time of the destruction with no deduction for salvage value, provided the claimant turns in the salvageable part to the Defense Reutilization and Marketing Office (DRMO) prior to payment of the claim or holds the item for turn-in to the carrier. (See DA Pam 27-162, paragraph 11-14i.) If the item is turned in to the DRMO, a receipt for the property, DD Form 1348-1A (Issue Release/Receipt Document), will be included

in the file of the paid claim. If the CJA or claims attorney determines that salvageable items are valued at \$25.00 or less, he or she may advise the claimant to dispose of them other than by turn-in, and this decision will be noted on the chronology sheet. Review the memorandum of understanding (MOU) between the military and industry on the salvage rights of the carrier prior to making a decision on a claimant turning in items to DRMO, granting a waiver to a claimant, or telling a claimant that he or she can dispose of the items. The carrier may exercise salvage rights, if applicable. In certain situations it may be necessary for the claims office to assist the claimant to arrange for disposition of the turn-in, if unduly burdensome.

f. If, after payment of a claim, an approving or settlement authority discovers that the payment was erroneous because the claimant misrepresented the quality, quantity, age, condition, replacement or repair cost of items, or other facts necessary to the adjudication of the claim, the approval or settlement authority may recalculate the amount allowed and arrange for recoupment of the erroneous amount paid. However, this procedure should be used sparingly, with doubts resolved in favor of the claimant. The procedure is independent of any other action taken against the claimant.

g. In determining allowable amounts, cents will be rounded off to the nearest whole dollar on each line item. Drop amounts under 50 cents and increase amounts from 50 to 99 cents to the next dollar. Thus, \$1.49 becomes \$1.00 and \$2.50 becomes \$3.00.

#### **11-15. Payable incidental expenses**

a. *Expenses incident to repair or replacement.* In addition to actual value, the cost of obtaining estimates of repair necessary to substantiate amounts claimed for damaged property may be considered, provided the action of the claimant in contracting for the estimates appears reasonable under the circumstances or was specifically directed by the approval or settlement authority. However, when the cost of an estimate can be applied toward the bill due upon completion of repairs, the cost of the estimate will not be allowed, whether or not the claimant chooses to have the repair done.

b. *Replacement of certain documents.* The fee charged for replacing certain necessary documents such as marriage licenses, driver's licenses, passports, or birth certificates may be allowed when these documents are lost or destroyed.

c. *Sales tax and drayage.* Sales tax and drayage (including postage or handling charges to mail an item or replacement part) can be allowed up to \$50 per claim prior to the actual cost being incurred. However, payment in excess of \$50 will require the claimant to substantiate that the cost has been incurred.

#### **11-16. Property recovered**

a. *Before approval.* Do not pay claims for missing property if the missing property is located before the claim is approved. Only the transit-related damage will be payable. As an exception to this rule, compensation may be allowed for necessary items that were missing for an unreasonable time after the expected arrival date and were replaced by claimant prior to the items being located. Necessary items are those that are basic to the operation of a household. If compensation is allowed under the above exception, the claimant will disclaim, in writing, further interest and ownership in such items in accordance with subparagraph 11-16b(2).

b. *After approval.* If missing property is located after the claim is approved for payment, the claimant will normally be advised of his or her option to—

(1) Accept any or all of the items located and remit the amount already allowed for such items to the United States. In certain circumstances, the claimant will not have an option: the Chief, Personnel Claims and Recovery Division, USARCS, or his or her designee can require the claimant to accept any or all of the items and remit the amount allowed.

(2) Disclaim in writing further interest and ownership in the property and retain the amount approved for payment. If, however, the approval or settlement authority determines that any of the

recovered property is substantially different in quality, price, or value from the property claimed, the approval or settlement authority may require the claimant to return the amount allowed for such property and accept the property.

#### **11-17. Companion claims**

When two or more claims arising from the same incident are, by reason of differences in amounts, within the jurisdiction of different approval or settlement authorities, action will be withheld on these claims until the authority having jurisdiction over the largest claim has determined that the claims arising out of the incident are payable, unless the claims lesser in amount are clearly payable and meritorious.

#### **11-18. Emergency partial payments**

a. Frequently a claimant is in immediate need of funds to replace damaged or destroyed property. An emergency partial payment up to \$2,000 is authorized under the following circumstances:

(1) A hardship situation exists that can be alleviated by providing immediate funds for the repair or replacement of certain property lost or damaged.

(2) A claim has been presented.

(3) The approval or settlement authority determines that the claim is clearly payable under this chapter, in an amount exceeding the amount of the proposed emergency payment.

b. The approval or settlement authority may approve an emergency partial payment on any claim that meets the above criteria. If the adjudicated amount exceeds the approval or settlement authority's delegated monetary amount, pay up to the delegated amount (less the emergency payment), mark the outside of the file "PRIORITY" and transfer it with all documentation (including computer disk, paper screen, and memorandum of opinion) to the next higher claims authority for additional payment.

c. Prior to making any emergency payment, the authority approving such payment normally will obtain an executed partial acceptance agreement from the claimant or his or her representative. Only the Chief, Personnel Claims and Recovery Division, USARCS, or his or her designee, can authorize emergency partial payments above \$2,000. The authority requesting an emergency partial payment above \$2,000 may coordinate by telephone with USARCS.

#### **11-19. Personnel claims memorandum**

a. A personnel claims memorandum of opinion will be included in the file of each personnel claim disapproved; forwarded for adjudication, disapproval, or reconsideration; or forwarded with a recommendation that there be a deviation from the Allowance List—Depreciation Guide or other established policy.

b. A personnel claims memorandum of opinion will be signed by the CJA or claims attorney. It will be routed through any intervening settlement authority, addressed to the settlement authority who will take final action (for example: a disapproval would be addressed to the SJA of an ACO, and a reconsideration which cannot be acted on by the head of an ACO would generally be addressed to the Commander, USARCS). The memorandum will be sufficiently detailed to explain fully and support the action taken or recommended.

#### **11-20. Reconsideration**

A claimant has 60 days from the settlement date of the claim to request reconsideration. The head of an ACO may waive this time period in exceptional cases. The claimant will receive written notification of this time limit as part of the notice of action on the claim. A claim will be reconsidered under the conditions listed below. Reconsiderations normally require additional investigation and review. This additional information will be documented in the file. An approval or settlement authority—

a. May always reconsider his or her action if the original action was in error or is incorrect based on new facts. This may be pursuant to either a claimant's oral request for reconsideration or as a result of any post-settlement review conducted on the claims file. Note that while the original approving or settlement authority may

consider a claimant's "oral" request for reconsideration, claims personnel should advise claimants that a higher settlement authority will not act on an oral request until the claimant presents it in writing in accordance with subparagraph *b*. The basis for any change will be clearly reflected in the file by additional documentation or by explanation on the chronology sheet.

*b*. Must reconsider a claim upon the written request of the claimant or someone acting on his or her behalf. The claimant must clearly state the factual or legal basis for relief. However, the reconsideration process must be considered not as an adversarial process, but rather as an opportunity for the approval or settlement authority to continue a dialogue with the claimant. Every effort should be made to develop the claimant's version of the facts. A claim will be reconsidered even if a settlement agreement has been executed.

(1) The original approval or settlement authority will modify the original action if he or she determines that the original action was incorrect, or is incorrect based on new evidence. The basis for any change will be clearly reflected in the file by additional documentation or by explanation on the chronology sheet.

(2) A successor or higher approval or settlement authority will only modify the original action on the basis of fraud, substantial new evidence, mistake (misinterpretation) of law or regulation, or an error in calculation. The basis for any change will clearly be reflected in the file by additional documentation or by explanation on the chronology sheet.

(3) If the approval or settlement authority cannot take final action on the request (see para *c* below), he or she will issue any offered payment and will forward the claim through any intervening approval or settlement authorities to the official authorized to take final action on the request.

*c*. May take final action on a request for reconsideration if the action taken on reconsideration results in the acceptance by the claimant as full relief on the claim.

*d*. May take final action on a request for reconsideration if he or she is the head of an ACO or higher settlement authority and—

(1) The reconsideration request does not contain new facts or legal basis for requesting reconsideration; or

(2) There was no timely request for reconsideration and no exceptional circumstances are present; or

(3) The total amount in dispute after the settlement or approval authority has acted on the request for reconsideration does not exceed \$1,000.

*e*. Will forward to USARCS for action a request for reconsideration that does not meet any of the criteria in subparagraphs *c* or *d*, above, or—

(1) Involves a claim on which the head of an ACO or higher settlement authority has personally acted, where that individual believes the request for reconsideration should be denied; or

(2) Involves a question of policy or practice that the head of an ACO or higher settlement authority believes is appropriate for resolution by USARCS; or

*f*. As an exception, the Chief, U.S. Army Claims Service, Europe (USACSEUR), may take final action on any reconsideration request forwarded there by a subordinate office. The Chief, USACSEUR, will include a complete copy of the final action and will forward the file to the Commander, USARCS.

*g*. The authority to take final action on reconsideration requests is personal to the settlement or approval authority and may not be delegated.

*h*. Prior to forwarding a request for reconsideration, the settlement or approval authority must notify the claimant, in writing, of the action he or she has taken.

## **11-21. Judge advocate responsibilities**

### *a. Reductions for inaction.*

(1) The JA will ensure that, when a demand on a carrier or other third party (other than a private insurer, see subparagraph (2)), is required and the claimant's failure, absent good cause, to provide notice or perform other required actions materially prejudices effective recovery action with respect to all or part of the loss, the

amount otherwise allowable under this chapter will be reduced by the amount of the anticipated recovery so affected on an item-by-item basis.

(2) When a claimant fails to provide timely notice to perfect a claim against his or her private insurer, absent good cause, the claim will be denied. In determining whether a claimant has good cause for failing to provide timely notice to a private insurer, the CJA or claims attorney will, in addition to the considerations in subparagraph (3), determine whether the claimant (or agent) willfully did not provide notice to his insurance carrier. See subparagraph 11-11f for policy when a claimant refuses to provide information concerning private insurance. A claimant will be presumed to have knowledge of the terms and conditions of his or her insurance contract.

(3) When a claimant fails to provide timely notice to a carrier, warehouse firm, or private insurer, settlement and approval authorities may waive reduction action for good cause only when one of the following circumstances directly contributed to the claimant's failure to give timely notice:

(a) Officially recognized absence (for example: TDY or off-post training exercises) resulting in claimant's absence from official duty station for a significant portion of the notice period.

(b) Hospitalization of claimant for a significant portion of the notice period.

(c) Substantiated misinformation concerning notice requirements given to the claimant by Government personnel.

(4) Requests for good cause waivers under circumstances other than those in subparagraph (3) may be granted only by the Commander, USARCS, or designee.

(5) Prior to taking reduction action, the CJA or claims attorney will ensure the claimant is provided an opportunity to explain the circumstances of his or her failure to take appropriate action, and that the claim file is documented to show the claimant was afforded this opportunity and the result provided. The chronology sheet in the file will contain an explanation of the CJA or claims attorney's decision regarding reduction or the lack thereof.

*b. Information and assistance to claimants.* Claims personnel will—

(1) Furnish the necessary claims forms (DD Form 1842 and DD Form 1844) to any individual who indicates, in person or by letter, that he or she desires to be compensated for loss or damage to personal property incident to service.

(2) Furnish instructions and advice as to the evidence required to substantiate the claim, assist in the completion of claim forms, and help with the procurement of evidence in support of the loss and the amount claimed.

(3) Assure that the description of the items and the damage shown on DD Form 1844 are sufficiently detailed to permit verification of the purchase price and replacement price or repair cost of the item claimed.

(4) Inform a claimant of the time limits within which a claim must be filed in order to be considered.

(5) Inform all claimants that they must file and settle with their private insurance companies before the CJA or claims attorney will approve a claim for payment under this chapter. Claimants who state they have no insurance will be asked to certify that fact and the written statement will be included in the claim file. The claimant will be required to submit proof of final action by the insurer. A CJA or claims attorney may decide to approve a claim for payment under this chapter without a claimant first settling with his or her insurance company in cases where an insurance company improperly refuses to pay a claim or the CJA or claims attorney determines the claimant has good cause.

(6) Advise a claimant to notify the CJA or claims attorney of any offer of settlement or denial of liability by any third party, and to secure the CJA or claims attorney's written consent before executing a release or acceptance of any such offer.

(7) Take an active and continuing role in publicizing claims information to soldiers and their families.

(8) Inform the claimant whose claim has been denied in part or in full of his reconsideration rights and applicable time limits.

c. *Other actions.* The CJA or claims attorney will ensure that—

(1) DD Form 1840-R (Notice of Loss or Damage) is dispatched to the appropriate third party within 75 days of delivery of goods, or 10 days for European local moves and line haul shipments, that a copy of the DD Form 1840 (Joint Statement of Loss or Damage at Delivery) and Form 1840-R is dispatched to the destination transportation office, and that a signed and dated copy is maintained and incorporated into any claim filed.

(2) The servicing transportation office is directed to inspect damaged property in appropriate cases.

(3) The DD Form 1844 is completed (amount allowed column, remarks column, and where appropriate, either or both columns for exceptions) prior to settling the claim.

(4) All documents written in a foreign language are translated into English, either verbatim or in summarized form.

(5) A request to DFAS-IN is prepared seeking return of unearned freight charges for property that carriers lose or irreparably damage.

(6) A claims office representative will periodically attend local transportation office outbound briefings to ensure that appropriate information is disseminated to soldiers.

(7) Inspections by claims office personnel are conducted in appropriate cases (for example: large claim, reconsideration, fraudulent claim, dispute with claimant over amount of pre-existing damage (PED) or depreciation taken, or need for reupholstering an item) and incorporated into the file.

d. *Financial.* The CJA or claims attorney will properly manage claims funds. This includes the following:

(1) On a monthly basis, reconciling recovery accounts with the servicing Defense Accounting Office (DAO) to ensure funds are properly deposited into the correct account.

(2) On a monthly basis, reconciling expenditure accounts with the servicing DAO to ensure that DAO expenditures match claims office expenditures.

(3) Ensuring expenditures are from the appropriate fiscal year accounts.

(4) Recovery checks are properly secured pending deposit.

## 11-22. Finality of settlement

Except as provided in subparagraph 11-20*b*, the settlement of a claim is final and conclusive for all purposes (31 USC 3721(k)).

## Section III

### Recovery From Third Parties

#### 11-23. Scope

a. The Army Carrier Recovery Program involves supervising and pursuing administrative settlements of all claims in favor of the Government against third parties arising from claims settled under the preceding sections of this chapter. The program includes making and issuing policies, procedures, and instructions pertaining to recovery action.

b. The statutory authority for pursuing recovery action against third parties is the Federal Claims Collection Act, 31 USC 3711-3720E.

c. The term “third parties,” as used in this section, refers to all types of contractors, carriers, and insurers of personal property.

#### 11-24. Duties and responsibilities

a. Field claims approval and settlement authorities are responsible for local implementation of the Army Carrier Recovery Program and will ensure that—

(1) Proper notice is provided to third parties.

(2) Claims are processed so relevant time limitations on pursuing recovery demands are met, particularly the six-year SOLs set forth in 28 USC 2415(a). In overseas areas, statutes of limitations relevant to locally procured tenders and contracts will be observed.

(3) Servicing transportation offices provide supporting documentation and perform necessary inspections in a timely manner. Consideration will be given to having claims personnel inspect if transportation personnel are unavailable.

(4) The claim file includes complete, legible documentation needed to support recovery action, including a copy of the itemized settlement breakdown prepared by the claimant's insurer, when appropriate.

(5) Third party liability is correctly calculated, and is reflected on DD Form 1844. This should be done at the same time that payment to the claimant is calculated.

(6) Written demands for reimbursement are prepared against appropriate third parties, and demands and supporting documents are dispatched locally within seven days of settlement with the claimant. If no demand is prepared because liability will not be pursued, claims personnel will explain the basis for this on the claims chronology sheet and make a brief entry “carrier not liable” in the automated database. Note, however, that files forwarded for centralized recovery must be held at least 30 days but not more than 45 days, after settlement with the claimant. This 30 day delay allows time for computer data to be processed at USARCS in advance of receiving the claim file. Closed files (no further action to be taken) will be forwarded for retirement on the 45th day after the files are closed.

(7) Unearned freight letters are prepared when required and are either included in files forwarded for centralized recovery or are dispatched locally after settlement with the carrier.

(8) Settlement offers from third parties are accepted or rejected within 30 days of receipt.

(9) Checks received are kept in a locked container in accordance with AR 37-103 and are hand-carried or mailed to the servicing DAO within three working days of acceptance. Checks will be accepted or rejected and returned to the third party within 30 days of receipt.

(10) Under the terms of most contracts, carriers have up to 120 days after receipt of a demand to pay, deny or make a final written offer. Claims files for which a third party fails to satisfy its liability within 150 days of dispatch of a demand, are forwarded to USARCS or to contracting officers for offset, as appropriate. Carriers attempting to settle a claim may be granted an extension beyond the normal 120 day deadline in order to complete negotiations.

(11) Demand packets are included for all claim files forwarded to USARCS due to incidents of bankruptcy.

(12) Demand packets are included in all claim files forwarded to USARCS for reconsideration.

b. The Commander, USARCS, is responsible for the general administration of the Army Carrier Recovery Program and for the Army Centralized Recovery Program. The Commander, USARCS, will ensure that field claims offices comply with subparagraph *a* above, and will also ensure—

(1) Demands for reimbursement received for centralized recovery are reviewed for correctness and dispatched within seven days of receipt.

(2) Within 30 days of receipt, checks matched to files are accepted or rejected and returned to the third party. If accepted, all checks will be mailed to the servicing DAO within three working days of acceptance.

(3) All checks are kept in a locked cabinet in accordance with AR 37-103.

(4) Unearned freight letters are dispatched after settlement with the carrier.

(5) Offset action, or other collection action, as appropriate, is initiated against any carrier or other third party that fails to satisfy its liability.

(6) Field claims offices are promptly notified that a third party has filed for bankruptcy so that the field claims offices can forward all files involving the bankrupt third party to USARCS as soon as possible.

(7) Records are maintained of NTS contractors who default on their contractual obligations, and of incidents that occur in NTS warehouses, in order to pursue liability as appropriate.

c. The Chief, U.S. Army Claims Service, Europe, and the Chief, U.S. Armed Forces Claims Service-Korea, will—

(1) Assume the responsibilities outlined in subparagraphs *b*(1) through (5) on claims forwarded for European or Korean centralized

recovery, except that offset actions requiring action by Defense Finance and Accounting Service-Indianapolis (DFAS-IN) will be forwarded to USARCS.

(2) Review each Privately Owned Vehicle (POV) shipment file forwarded for recovery action against the European inland carrier for potential liability within 45 days of receipt. If negotiations with a POV contractor result in an impasse, arrange for dispatch of a contracting officer's final decision within 30 days.

#### **11-25. Determination of liability**

A prima facie case of liability against a third party (for example: freight forwarder or warehouse) is established when evidence shows tender (delivery) of an item in good condition to the third party, return of the items in a damaged condition or loss of the item, and the amount of damage or loss. See discussion of these concepts at DA Pam 27-162, paragraph 11-25.

#### **11-26. Exclusions of liability**

The third party is not always held responsible even though a prima facie case is established. A carrier or freight forwarder is not liable for loss or damage that is due solely to an Act of God, inherent vice of the article, acts of a public enemy, acts of the shipper or acts of a public authority. However, the third party has the burden of proving that loss or damage was caused by one of the excepted conditions that relieves it of liability. This burden includes proving that negligence by the agents of the carrier, forwarder or warehouse did not contribute to the loss. Third parties involved in the transportation or storage of goods are not liable for the following:

- a. Infestations by mollusks, arachnids, crustaceans, parasites, or other types of pests, fumigation, or decontamination when not the fault of the third party.
- b. Pre-existing damage indicated on the inventory.
- c. Mechanical failure of an appliance unless there is evidence of external damage or unless it can be clearly shown that the mechanical failure was caused by the third party (for example: statement by claimant of prior working condition of the appliance combined with an estimate of repair that explains how the appliance was damaged in shipment).
- d. Loss or damage that occurs while the shipment was in the custody and/or control of the Government.
- e. Loss or damage to any item for which timely notice has not been provided to the third party.
- f. Any loss or damage not presented to the third party within the 6-year SOL for filing claims.

#### **11-27. Contractual limits on maximum liability of third parties**

a. *General.* In order to obtain economical rates, the domestic and international rate solicitations and most direct procurement method (DPM) contracts contain a provision limiting the third party's maximum liability. If this liability is expressed as an amount times the weight of the shipment, the weight used is normally the net weight listed on the Government bill of lading (GBL). Gross weight is used on baggage shipments (codes 7, 8, and J). If the liability is expressed as an amount times the weight of an article, the weight listed in the Joint Military-Industry Table of Weights (see DA Pam 27-162, figure 11-13) will be used to determine the maximum liability. If an article is shipped in a carton, the weight of the carton is the weight of that article. Each piece or package shipped constitutes one article. Any article/item taken apart or "knocked down" for handling constitutes one article. Individual article weights are listed in the Joint Military-Industry Table of Weights.

##### *b. Carriers.*

(1) Liability on Through Government Bill of Lading (TGBL) (codes 1 and 2) or International Through Government Bill of Lading (ITGBL) (Codes 3, 4, 5, 6 and T) household goods shipments will depend on the dates goods were picked up by the carrier. The TGBL carrier may be liable for the full depreciated value of the claim, if the owner purchased the higher released valuation average under Option 1. The TGBL carrier may be liable for the current

replacement cost of items, without application of depreciation, if the owner purchased replacement cost protection (RCP), also known as "full replacement protection." See DA Pam 27-162, paragraph 11-27, for details.

(2) Liability of ITGBL carriers for hold baggage shipments (Codes 7, 8, and J) will also depend on the date of pickup of goods. See DA Pam 27-162, paragraph 11-27, for detailed instructions. For shipments picked up between 1 October 1993 and 1 October 1995, the maximum liability was \$1.80 per pound per article. Before 1 October 1993, the maximum liability was only \$.60 per pound per article. After 1 October 1995, it is \$1.25 times the gross weight of the shipment.

(3) The maximum liability of domestic freight carriers of household goods shipments is generally stated on the GBL or in the contract/rate solicitation. Excess valuation or RCP is not available on such shipments.

(4) Liability of commercial airlines is stated on the GBL. Excess valuation or RCP is not available on such shipments.

(5) Liability for intra-theater shipments in Europe and Korea is addressed in DA Pam 27-162, paragraph 11-35.

c. *Nontemporary storage contractors.* The contract for storage of household goods is the Basic Ordering Agreement, which is governed by DOD 4500.34-R, chapter 6. Under this agreement (DOD 4500.34-R, app H), a NTS contractor is liable for a maximum of \$50 per inventory line item, for storage booked before 1 January 1997. (An exception to the limit of \$50 per item applies to large wall units known as schranks. Regardless of the way a schrank is listed on the inventory, only one charge of \$50 can be applied when liability is calculated.) For storage booked after 1 January 1997, liability is \$1.25 times the weight of the shipment. The contractor may be liable to the full extent of the declared value if the owner purchased an insurance policy from the warehouse firm. No liability can be pursued against the NTS contractor when goods are given out to a carrier unless an exception sheet was prepared by the carrier showing any differences as to shortages or overages or the condition of items. The exception sheet must be signed and dated by a representative of the warehouse to be valid.

d. *Packing and containerization contractors.* Currently, a local contractor operating under Schedule I or II is usually liable for loss or damage in the amount of sixty cents per pound times the weight per article as stated in the liability clause of the contract. Currently, schedule III shipment liability is a maximum of \$1.25 per pound times the net weight of the shipment.

e. *Mobile home carriers.* Liability is governed by the applicable rate tariff, rate tender, declared valuation, or personal property GBL as stated in DOD 4500.34-R, Appendix E, and generally is the full cost of repairs for damage incurred during transit. In addition to the exclusions listed in paragraph 11-26, a mobile home carrier is excused from liability when the carrier has introduced substantial proof that a latent structural defect (one not detectable during the carrier's preliminary inspection) caused the loss or damage.

#### **11-28. Settlement procedures in recovery actions**

a. *Offers of settlement.* Any offer of settlement or payment from a third party should be carefully examined giving due regard to all factors involved. When such consideration shows the offer or payment to be appropriate, it may be accepted. When the offer or payment does not appear appropriate, further correspondence should be initiated with the third party to clarify the issues.

b. *Prior acceptance of settlement by owner.* DA is not bound by the owner's acceptance of a settlement from a third party where the acceptance was procured through fraud, duress, collusion, mistake of fact, or misrepresentation. In such circumstances, when a claim is filed, all correspondence with the third party must be included in the file and further recovery action should be taken where the prior settlement is inadequate.

##### *c. Establishment of timely notice.*

(1) *Handled by one third party only.* Where one third party had responsibility for the shipment from pickup to delivery, written exceptions on DD Form 1840 are evidence that items in the shipment were lost or damaged when delivered. However, a delivery

receipt (DD Form 1840) with no damage indicated is only prima facie evidence of a good delivery and may be rebutted by submission of DD Form 1840-R, listing all later discovered loss or damage. The DD Form 1840-R must be dispatched to the appropriate third party within 75 days of delivery; the date of dispatch is the controlling date. However, the normal 75-day limit for reporting additional damage on DD Form 1840-R may be extended by the claimant's hospitalization or officially recognized absence. See the Joint Military-Industry Agreement on Loss and Damage Rules in effect at the time of shipment. Implementation dates for the use of this form and details regarding its use are found in DA Pam 27-162, paragraph 11-14i. Timely notice is a question of fact and may be established by proving a carrier's agent inspected damaged items within 75 days of delivery. It may also be shown by exceptions noted at delivery on DD Form 619-1 (Statement of Accessorial Services Performed), or on the inventory if dated and signed by a representative of the third party. A letter, or other document noting loss or damage, dispatched to the third party within 75 days of delivery may also constitute timely notice.

(2) *Handled by two or more third parties.* Each time custody of the property changes hands, the inventory will be annotated to show any overage, shortage, or damage found. In the case of pickup by a carrier from a NTS contractor, an exception sheet must be prepared and be acknowledged by the warehouse firm to reflect any changes in the condition of the goods.

#### **11-29. Reimbursements to claimants and insurers from money received**

USARCS is responsible for reimbursing claimants any amount recovered in excess of what was paid under this chapter on claims that involve payment of a statutory or category limit, option I or replacement cost protection purchased by the member. When forwarding these files to USARCS, the field office should identify them by writing in red on the front upper left corner of the file, "CLAIMANT DUE CARRIER RECOVERY." Similarly, if private insurance has paid all or part of the claimant's loss, the amount the insurer has paid will be added to the Army's demand against the third party. A pro rata share of the amount will be refunded to the insurer. The file will be marked in red "INSURANCE RECOVERY."

*a. Payment to the claimant beyond the statutory limit.* When payment of the statutory limit is made on a claim determined to be meritorious in an amount greater than the statutory limit after the application of individual and category maximum allowances, USARCS will pay the statutory limit and seek recovery of the full loss from the carrier. If an amount greater than the statutory limit is recovered, USARCS will apply amounts recovered from a carrier or contractor to compensate the claimant to the extent of the difference between the statutory limit and the amount that would have been paid but for the statutory limit. However, when an insurer has paid any portion of the value of the items involved, USARCS will apply the procedure in subparagraph *c*. Any additional recovery monies available will be paid out under subparagraph *b*, if applicable.

*b. Reimbursement to a claimant.* A claimant may not be fully compensated for loss on one or more items by the Army because of regulatory limits on payments for those items (for example, property damaged in excess of the maximum allowable limits or property held for a private business). However, all losses or damages that are verified by the evidence will be asserted against the responsible third party. Money recovered in excess of what was paid by the Army will be paid to the claimant by USARCS, after the money is collected from the carrier or other third party, up to the adjudicated value of the claimant's loss under the following circumstances:

(1) When the adjudicated value of the loss on an item exceeds an item or category maximum and the amount collected for that item exceeds the amount paid for that item on the claim, the claimant will be paid the amount recovered in excess of the amount previously paid.

(2) When the adjudicated value of the loss on an item exceeds an

item or category maximum and the claimant has purchased increased value protection (Option 1) or other depreciated value coverage, the claimant will be paid up to the amount of the additional coverage to the extent that this does not exceed the adjudicated value on that item or category.

(3) When the value of the loss of an item exceeds the amount of the Army's payment and the claimant has purchased RCP, the claimant will be paid up to the amount of the additional coverage to the extent the Army is able to recover an amount in excess of what was paid.

(4) Command claims services, ACOs, and CPOs with approval authority will not pay such claims. All of these claims will be forwarded to USARCS for reimbursement of the claimant.

*c. Reimbursement to insurers by USARCS only.* When a claimant has purchased an insurance policy covering the shipment or storage of property and the insurance company pays any portion of the value of items lost or damaged, the insurance company is entitled, to the extent of its payment, to reimbursement of a pro rata share of the amount recovered by USARCS on such items. All claims officers, when computing third party liability must include amounts paid by private insurance and forward the file to USARCS.

*d. Reimbursement of recovery money to a carrier, warehouse or contractor.* If a claims office or contracting office determines that recovery or offset against a carrier, contractor or warehouse was improper, the claims office will forward a request (with appropriate justification) to the Chief, Personnel Claims and Recovery Division, USARCS, who will authorize a refund as necessary.

#### **11-30. Refund action against a claimant**

A claimant is entitled to the benefit of any additional coverage purchased (such as private insurance, excess valuation, or RCP) on an item-by-item basis as described in DA Pam 27-162, paragraphs 11-21 and 11-27. If a claimant is compensated by a third party on an item and is also compensated by DA pursuant to this chapter, the claimant is entitled to retain only the portion of the payment that represents the total adjudicated value of the item, without regard to a limitation on payment due to application of a maximum allowance. If a claimant is compensated twice and the total exceeds the amount the claimant is entitled to retain, prompt action to recover the excess will be taken in accordance with DA Pam 27-162, paragraph 11-30.

#### **11-31. Privately owned vehicles and other recovery from ocean carriers**

No demand will be made directly on an ocean carrier operating under a Military Sealift Command contract by individual claimants or by field claims offices.

*a. Privately owned vehicles.*

(1) *Payment of less than \$100.* A POV shipment file will be closed and no recovery action taken when the amount paid for the damage is less than \$100. POV shipment files involving loss of items (for example: tool boxes, infant seats, seat covers, first aid kits, jacks, jumper cables, radios) from vehicles combined with any damage to the POV will continue to be processed for recovery regardless of the amount claimed.

(2) *Payment of \$100 or more.* Before a claims office determines liability, it should make every effort to obtain the original DD Form 788 (Private Shipping Document for Automobile) (copy 1). Following receipt of the DD Form 788, the claims office will take action in accordance with subparagraphs 11-31a(3) or (4).

(3) *Non-European claims offices.* If the amount paid on a POV shipment claim is \$100 or more, claims personnel will prioritize recovery actions and handle the most expensive claims first, especially claims of \$2,000 or more. Claims personnel will—

(a) Assert a demand against the responsible contractor if an out-port contractor, stevedore, or inland transporter damaged the vehicle.

(b) Forward the claim to U.S. Army Claims Service, Europe, ATTN: AEUTN-PC, Unit 30010, APO AE 09166-5346, for recovery if the damage occurred while the POV was in the custody of a European outport, stevedore, or inland shipment contractor.

(c) Close the file and forward it for retirement if the POV was damaged while in the custody of Government personnel.

(d) Determine the name of the ocean carrier (ship) from the DD Form 788 and, if the damage occurred while the vehicle was in the custody of the ocean carrier, forward the claim to the Military Sealift Command. Use a transmittal letter in the format shown in DA Pam 27-162, figure 11-31.

(4) *European claims offices.* If the amount paid on a POV shipment claim is \$100 or more, claims personnel will prioritize assembly of the file and will forward it to USACSEUR for recovery action 21 days after the claim is paid. USACSEUR will prioritize action on these files as discussed in subparagraph 11-35a(3)(a). USACSEUR will review POV shipment files for recovery action against European inland carriers for potential liability within 45 days of receipt. If impasse results, USACSEUR will arrange for dispatch of contracting officer's final decision within 30 days of impasse.

b. *Personal property other than vehicles (for example, household goods).* After payment of a claim involving personal property other than POVs, the entire claim file will be forwarded, directly to the Commander, USARCS, for recovery action as appropriate.

### 11-32. Centralized recovery program procedures

After settlement of a claim under this chapter (including DPM or intra-theater shipments if private insurance is involved, and all mobile home claims), requiring centralized recovery processing as determined by the Commander, USARCS, the office paying the claim will hold the file for 30 days before forwarding it to USARCS. (See also subpara 11-24a(6).) All such claims where recovery action is anticipated will include legible documentation and will be assembled as described in DA Pam 27-162, paragraph 11-32.

### 11-33. Offset actions

a. *Offset actions against government bill of lading carriers.* Only USARCS may process offset actions against GBL carriers.

b. *Offset actions against nontemporary storage contractors.* When a NTS contractor is liable and a satisfactory settlement cannot be reached, the claims office will forward the file to the Regional Storage Management Office (RSMO) responsible for administering the Basic Ordering Agreements for storage in that geographic area.

c. *Offset against packing and containerization contractors.* When any claims office determines that a packing and crating contractor is liable and a satisfactory settlement cannot be made, a copy of the complete claim file will be forwarded by letter to the local contracting office administering the contract, requesting offset action. The contracting officer will conduct a careful review of the claim file and make a determination on the issue of contractual liability on the information contained in the file and on personal findings of fact in accordance with the contract involved.

d. *Carrier procedural rights.* Title 4, Code of Federal Regulations, Section 102.3(b)(2) affords a carrier or contractor certain procedural rights prior to offset. A CJA or claims attorney will certify to the contracting office that the Army has complied with 4 CFR 102.3 if requested to do so. The CJA or claims attorney will give the carrier or contractor—

(1) Written notice of the nature and amount of the debt, and the agency's intention to collect by offset if the debt is not paid. The DD Form 1843 (Demand on Carrier/Contractor) or demand letter provides this notice.

(2) The opportunity to inspect and copy agency records pertaining to the debt if requested.

(3) The opportunity to obtain review within the agency if the carrier or contractor requests this. If requested, the CJA or claims attorney will review the file prior to offset. No oral hearing is required.

(4) The opportunity to enter into a written agreement with the agency to repay the debt. Normally, a carrier or contractor will be allowed 45 days to follow up a settlement offer with a check. If a satisfactory check is not received within 45 days, the CJA or claims attorney should offset the carrier or contractor without delay.

e. *Emergency offset.* In accordance with 4 CFR 102(b)(5), the head of an ACO or a CPO may effect offset prior to completion of any or all of the procedures in subparagraph d above if failure to promptly offset would substantially prejudice the Government's ability to collect the debt.

### 11-34. Compromise or termination of recovery actions

Subject to the limitations contained in this chapter, the Commander, USARCS, is delegated authority to compromise or terminate collection action on claims against third parties in accordance with the provisions of 31 USC 3711.

### 11-35. Direct Procurement Method recovery

Unless private insurance or payment of the statutory limit is involved (see para 11-30)—

a. The recovery file for a European intra-theater tender or a delivering DPM contract will be prepared and forwarded to U.S. Army Claims Service, Europe, Unit 30010, APO AE 09166-5346.

b. The recovery file for a Korean intra-theater tender or a delivering DPM contract will be assembled and forwarded to U.S. Armed Forces Claims Service-Korea, Unit 15311, APO AP 96205-0084.

c. Other recovery actions against a delivering third party not involving shipment under a TGBL to include packing and containerization contract shipments, will be processed to completion by the field claims office in accordance with paragraph 11-36 of this publication and DA Pam 27-162, paragraph 11-36.

### 11-36. Special recovery actions

a. *Claims arising from packing and containerization contract shipments.* Field claims offices will process to completion recovery actions on all packing and containerization contract shipments against the delivering contractor unless private insurance is involved (see para 11-29).

b. *Claims caused by stevedoring contractors.*

(1) The "Liability and Insurance" clause used in stevedoring and related services contracts provides in pertinent part that the contractor is liable to the Government for loss or damage to personal property (including POVs), caused in whole or in part, by his or her negligence or fault and that the amount determined by the contracting officer will be withheld from payments otherwise due the contractor.

(2) Claims offices processing claims against the Government under this paragraph for loss, damage, or destruction of personal property of any kind (including POVs) caused in whole or in part by the negligence of a contractor will, when final recovery action is complete, forward the claim file directly to the Commander, USARCS. Claims offices processing a claim involving a POV will obtain an affirmative statement from the claimant as to whether settlement is also being processed directly with the contractor or has already been received from the contractor. Normally, a settlement with the contractor bars further claims against the Government. (However, see subpara 11-28b.) The procedures for processing POV recovery actions against stevedores are set forth in paragraph 11-31.

c. *Other actions.* Recovery actions involving storage in transit converted to storage at owner's expense, mobile homes and airline shipments are discussed in DA Pam 27-162, paragraph 11-36.

### 11-37. Unearned freight claims

Procedures for processing unearned freight claims are set out in DA Pam 27-162, paragraph 11-37.

## Chapter 12 Nonappropriated Fund Claims

### Section I Claims Against Nonappropriated Fund Activities

#### 12-1. General

This section sets forth the procedures to follow in the settlement and



payment of claims generated by the acts or omissions of the employees of nonappropriated fund (NAF) activities.

## **12-2. Claims by employees for losses incident to employment**

Claims by employees for the loss of or damage to personal property incident to employment will be processed in the manner prescribed by chapter 11 and will be paid from NAFs in accordance with paragraph 12-7.

## **12-3. Claims generated by the acts or omissions of employees**

*a. Processing.* Claims arising out of acts or omissions of employees of NAF activities will be processed and settled in the manner specified for similar claims against the United States, except that payment will be made from NAFs in accordance with AR 215-1, and paragraph 12-7 of this regulation. Relevant procedural requirements of this regulation's pertinent chapters, as stated below, will be followed except as provided in paragraphs 12-6 and 12-7. However, when the Nonappropriated Fund Instrumentality (NAFI) is protected by a commercial insurer (for example: flying and parachute activities), the claim will be referred to the insurer as outlined in subparagraph 12-3d.

(1) *Claims arising within the United States, its territories, commonwealths, or possessions.* Such claims will be processed in the manner prescribed by chapters 3, 4, 5, 6 or 8, as appropriate.

(2) *Claims arising outside the United States, its territories, commonwealths, or possessions.* Such claims will be processed in accordance with the provisions of applicable Status of Forces Agreements (SOFA) or in the manner prescribed by chapters 3, 5, 6, 8 or 10, as appropriate.

*b. Reporting and investigation.* Such claims will be investigated in accordance with AR 215-1 and chapter 2 of this regulation.

(1) *Reporting.* All incidents involving personal injury, death, or property damage typically resulting from vehicular collisions, falls, falling objects, assaults, or accidents of similar nature occurring in NAF or AAFES facilities or at post exchanges, bowling centers, officers and noncommissioned officers clubs, or at other facilities located on land or situated in a building used by an activity that employs personnel compensated from NAFs, should be reported immediately to the person in charge of that NAF activity. The report should be made by the employee who initially received notice of the incident, regardless of the fact that the individual involved denies sustaining personal injury or property damage. Upon receipt of the report of the incident, the person in charge of the NAF activity concerned will transmit the report to the area claims office (ACO) or claims processing office (CPO) for investigation.

(2) *Investigation.* Claims arising out of acts or omissions of employees of NAF activities will be investigated in the manner set forth in chapter 2. A determination as to whether the claim is cognizable under this section will be made as soon as practicable.

*c. Customer complaints.* AAFES-generated complaints will be handled in accordance with Exchange Service Manual 57-2. NAFI-generated complaints will be handled in accordance with AR 215-1, chapter 3. Complaints generated by APF laundry and dry-cleaning operations will be handled in accordance with AR 210-130, chapter 2. Complaints generated by refunds of sales proceeds will be handled in accordance with AR 37-103, chapter 16.

*d. Commercial insurance.* Certain NAFI activities (such as flying and parachute activities, and all AAFES concessionaires) may have private commercial insurance.

(1) A claims investigation under chapter 2 will not be conducted except when the claim's estimated value may exceed the insurance policy limits. In that event, the Commander, USARCS, will be notified immediately and an investigation will be conducted with a view to determining whether the United States may be liable under chapters 3, 4, 6, 8 or 10. Otherwise, the ACO or CPO will refer the claim to the insurer and furnish copies as indicated in paragraph 2-12e. Assistance will be furnished to the insurer as needed. Copies of any other required investigations may be furnished to the insurer.

(2) The claim's status will be ascertained at key intervals to ensure that progress is being made, negotiations are properly conducted, and the file is closed. The Commander, USARCS, will be advised of any problems.

(3) If requested by either the insurer or NAFI officials, the appropriate claims authority will assist in or conduct negotiations.

(4) Where NAFI vehicles are required to be covered by insurance in foreign countries, the insurer will process the claim. However, if the policy coverage limit is exceeded or the insurer is insolvent, the claim may be processed under chapter 7, section III or, if chapter 7 does not apply, under chapters 3 or 10. See subparagraph 10-5c for additional guidance.

## **12-4. Persons generating liability**

Claims resulting from the acts or omissions of members of the classes of persons listed below may be processed under this section. An ACO or a CPO authority will ask the Commander, USARCS, for an advisory opinion prior to settling any claim where the person whose conduct generated the claim does not clearly fall within one of the following categories:

*a. Civilian employees of NAF activities whose salaries are paid from NAFs.*

*b. Active duty military personnel while performing off-duty part-time work for which they are compensated from NAFs.*

## **12-5. Claims payable from appropriated funds**

Claims payable from appropriated funds (APF) will be processed under the appropriate chapter. APF payable claims include those resulting from—

*a. Acts or omissions of military personnel while performing assigned military duties in connection with NAF activities.*

*b. Acts or omissions of civilian employees paid from APFs in connection with NAF activities.*

*c. Negligent maintenance of an APFs facility used by a NAF activity but for which the DOD or DA command concerned is responsible and has been notified of the deficiency by the NAF. Where liability is determined to exist for both a NAF and an APF activity, liability will be apportioned between the two activities.*

*d. Temporary use of a NAF facility by an APF activity.*

*e. Operation of Government owned or rented vehicles on authorized missions for NAF activities where the driver is a DA soldier or civilian employee and is paid from APFs.*

## **12-6. Settlement authority**

*a. Settlement.* Claims cognizable under this section and processed under chapters 3, 4, 5, 7, 8 or 10 will be settled by claims authorities authorized to settle claims under those chapters subject to the same monetary and denial authority limitations, except that TJAG, TAJAG, and the Commander, USARCS, or designee, may settle such claims without regard to monetary limitations. However, the approval of the Attorney General or his or her designee may be required for an apportioned amount to be paid from APFs when chapter 4 procedures are used and the amount to be paid from APFs exceeds \$200,000. Similarly, approval of TAJAG or the Assistant General Counsel is required when using procedures under chapter 3, 6, 8 or 10 and an apportioned amount to be paid from APFs exceeds \$25,000.

*b. Finality of settlement.* A determination made by a claims settlement authority on a claim processed under chapter 4 is subject to suit. A claim processed under chapters 3 or 6 may be appealed. Claims processed under chapters 4, 5, 8, 10 or 11, may be reconsidered in accordance with the paragraphs addressing reconsideration in those chapters.

## **12-7. Payment**

*a. The settlement or approval authority will forward the appropriate payment documents to the office listed in DA Pam 27-162, paragraph 2-101, for payment.*

*b. Reimbursement to a foreign country of the United States' pro*

rata share of a claim paid pursuant to an international agreement will be made from NAFs.

## Section II

### Claims Involving Persons Other than Nonappropriated Fund Employees

#### 12-8. Claims arising from activities of nonappropriated fund contractors

These claims should be disposed of in a manner similar to that set forth in DA Pam 27-162, paragraphs 2-22, 2-23, and 2-29. AAFES concessionaires are independent contractors required under local law to obtain workers' compensation coverage for their employees, as well as public liability insurance governing their operations. If a dispute arises as to whether such insurance is available or applicable, the claim should be forwarded to Headquarters, AAFES, ATTN: General Counsel, P.O. Box 660202, Dallas, Texas 75266-0202, prior to processing under the preceding chapters.

#### 12-9. Non-Nonappropriated Fund Instrumentalities Risk Management Program claims

The Risk Management Program (RIMP) is administered by the U.S. Army Community and Family Support Center under the provisions of AR 215-1 and AR 608-10. Non-NAFI RIMP claims are not payable under any other provision of this regulation and are paid to encourage the use of sports facilities and family child care providers (FCCP). However, except as otherwise provided in this section, non-NAFI RIMP claims are subject to the same requirements that apply to other tort claims. USARCS carefully monitors all such claims to ensure proper investigation and resolution.

#### 12-10. Claims payable

a. Non-NAFI RIMP claims can arise from the activities of—

(1) Members of NAFIs or authorized users of NAF sports property, while using such property, except real property, in the manner and for the purposes authorized by DA regulations and the charter, constitution, and bylaws of the particular NAF activity.

(2) FCCPs, authorized members of the provider's household and approved substitute providers while care under the family child care program is being provided in the manner prescribed in AR 608-10, except as excluded below. Such claims are generally limited to injuries to, or death of, children receiving care under the family child care program that are caused by the negligence of authorized providers. Claims arising from the transportation of such children in motor vehicles and claims involving loss or damage of property are not cognizable.

b. An ACO or a CPO will ask the Commander, USARCS, for an advisory opinion prior to settling any non-NAFI RIMP claim where the person whose conduct generated liability does not fall clearly within the categories listed above. Such authorities may also ask, through the Commander, USARCS, for an advisory opinion from the U.S. Army Community and Family Support Center prior to settling any claim arising under subparagraph a(2) above, where it is not clear that the injured or deceased child was receiving care within the scope of the family child care program.

c. Where liability has been determined to exist for both non-NAFI RIMP and APF activities, liability will be apportioned between the two activities.

d. The total payment for all claims (including derivative claims), arising as a result of injury to, or death of, any one person, is limited to \$500,000 for each incident. Continuous or repeated exposure to substantially the same or similar harmful activity or conditions is treated as one incident for purposes of determining the limits of liability.

#### 12-11. Procedures

a. *Reporting.* Non-NAFI RIMP claims (regardless of the amount claimed) and incidents that could give rise to non-NAFI RIMP claims will be reported to USARCS and the Army Central Insurance Fund immediately.

b. *Investigation.* ACOs and CPOs are responsible for the investigation of non-NAFI RIMP claims as set forth in chapter 2, section I. Such investigation will be closely coordinated with program managers responsible for the activity generating the claim. Close coordination with USARCS is also required, and USARCS will maintain mirror files containing the investigative materials of all actual and potential claims.

c. *Payment.* Non-NAFI RIMP claims will be transmitted for payment to The Army Central Insurance Fund, ATTN: CFSC-RM-I, Room 1256, 2461 Eisenhower Avenue, Alexandria, Virginia 22331-0508.

d. *Commercial insurance.* The provisions of subparagraph 12-3d also apply to claims arising under this section, except that in claims involving FCCPs, a claims investigation will be conducted regardless of whether commercial insurance exists.

#### 12-12. Settlement authority

a. *Settlement authority.* TJAG, TAJAG, and the Commander, USARCS, or designees, are authorized to approve, in full or in part, or deny a non-NAFI RIMP claim, regardless of the amount claimed, except where an apportioned amount to be paid from APFs exceeds their monetary authority and the action of the Attorney General, or his or her designee, or Assistant General Counsel is required as set forth in subparagraph 12-6a above.

b. *Approval authority.*

(1) An ACO, a CPO, or the chief of a command claims service is authorized to approve, in full or in part, non-NAFI RIMP claims presented in the amount of \$25,000 or less, and to approve such claims regardless of the amount claimed, provided that settlement of \$25,000 or less is accepted in full satisfaction of the claim, but only when the total value of all settlements, claims, and potential claims arising out of a single incident does not exceed \$50,000.

(2) The above authorities are not delegated authority to deny or make a final offer on a claim under this section. Claims requiring such action will be forwarded to the Commander, USARCS, with an appropriate recommendation.

c. *Finality of settlement.* A denial or final offer on a non-NAFI RIMP claim is final and conclusive and is not subject to reconsideration or appeal.

## Chapter 13 Claims Office Administration

### Section I Records and File Management

#### 13-1. Records

Unless otherwise required by this regulation, CJAs or claims attorneys charged with the responsibility for claims administration will maintain only current and temporary records as required for the administration of claims activities and for the preparation of prescribed reports. Basic records for each claims office are—

a. *DA Form 1667 (Claims Journal (Personnel) (Tort) (Affirmative) Claims).* Journals will be individually maintained for personnel claims, affirmative claims, and for tort and special claims, corresponding to the automated claims data management programs for such claims, using the U.S. Army Claims Service's most recently prescribed version of this form.

b. *Automated claims programs.* The USARCS Claims Legal Automated Information Management System (CLAIMS) consists of automated programs to manage claims effectively. The appropriate automated claims database will be used for all claims opened in fiscal year 1988 or later. Earlier year claims, if they involve expenditures of funds in fiscal year 1988 or later, will also use the appropriate database programs. The four automated claims database programs used in claims processing follows:

- (1) Tort and Special Claims Management Program.
- (2) Personnel Claims Management Program.
- (3) Affirmative Claims Management Program.

(4) Affirmative Potential Claims Management Program.

c. *Investigative files.* A claims office will maintain separate investigative files of potentially compensable events (PCE) for every incident it (or a unit claims officer) has investigated. An investigative file will be prepared when the claims office receives a copy of a report of incident or report of investigation from a unit claims officer or any other source. Similar files will be maintained for incidents investigated by a claims office or other Army official that might give rise to an affirmative claim in favor of the Army.

### 13-2. Arrangement of claims files

Instructions on the arrangement of claims files, including automated data information, financial data, action or recommendation regarding the claim, and the actual claim, are found in DA Pam 27-162, paragraphs 2-14 and 13-2. Properly arranged files contain the claim, automated data information, financial data showing the history of all payments, and accounting. Further instructions on the arrangement of files are found in paragraph 11-32 of this publication and in corresponding chapters of DA Pam 27-162.

### 13-3. Disposition of claims files

a. The Commander, USARCS, is the proper authority for post settlement review of claims against the United States. Subject to the provisions of subparagraphs *b* and *c* below, claims having file numbers 27-20a, 27-20g, 27-20h, 27-20i, 27-20j, and 27-20q under AR 25-400-2 will be forwarded to USARCS for disposition. Claims having other 27-20 file numbers will be disposed of locally according to the instructions in AR 25-400-2.

b. Files of completed tort claims will be forwarded to the Commander, USARCS, only after the expiration of any appeal period or the six-month period for filing suit. The file of a tort claim in which a claimant has not accepted a final offer within 180 days will also be forwarded.

c. For personnel claims involving recovery action, claims files will be assembled and processed for local recovery action or forwarded for centralized recovery action in accordance with DA Pam 27-162, chapter 11. After completion of final recovery action by field claims offices or command claims services, such files will be forwarded to USARCS for retirement in accordance with paragraph 11-24a(6).

d. If the claim is withdrawn, abandoned or otherwise discontinued by the claimant, the file will be administratively closed and forwarded to the Commander, USARCS.

### 13-4. Retrieval of claims files from USARCS to field claims offices

Generally, USARCS returns files to field claims offices for reconsideration, readjudication when missing items are located, and determination of possible fraud. When requesting return of a claim file, state the reason for the request.

### 13-5. Certified and registered mail

Correspondence to claimants and/or their attorneys that—

- Gives notice of abandonment under chapter 11.
- Denies the claim.
- Makes final offers in tort claims under chapters 3, 4, 5, 6, 7, 8, 10 and 12.
- Requests reconsideration or appeal in accordance with DA Pam 27-162, paragraph 2-98.

will be posted by certified or registered mail, return receipt requested. The return receipt (green card) will be retained as a part of the claims file as proof of receipt by the claimant or other addressee.

### 13-6. Maintenance of claims files

Claims files will be maintained in accordance with procedures set forth in AR 25-400-2 and in DA Pam 27-162, paragraph 13-6.

## Section II Monthly Claims Reporting System

### 13-7. General

a. A monthly status report of recovery actions and claims against the United States is prepared by the automation software in the Personnel Claims Management Program and the Tort and Special Claims Management Program. Use of the USARCS Claims Automation Program is explained in DA Pam 27-162, chapter 13, and software instructions, as well as periodic updates provided by the USARCS Information Management Office.

b. The data contained in the USARCS Claims Automation Program and the automated monthly claims office status reports provides useful information for claims officers, heads of area claims offices, JAs and SJAs responsible for OCONUS command claims services, and the Commander, USARCS. The system provides a uniform method of assignment of claim file numbers, which permits easy identification and retrieval of individual claim files, identifies delays in claims processing, and permits worldwide management control of all claims against the Government. The automated monthly reports forwarded to USARCS from the databases are used to prepare claims budgetary status reports and periodic budget estimates to the Defense Finance Accounting Service (DFAS) and the Office of the Assistant Secretary of the Army (Financial Management and Comptroller). Claims office personnel will ensure that automated claims records are complete and accurate.

c. This section does not apply to the reporting of reimbursement obligations to foreign countries pursuant to the North Atlantic Treaty Organization Status of Forces Agreement (NATO SOFA) or other similar treaties or agreements.

d. The Commander, USARCS, will furnish software and documentation relating to the Personnel Claims Management Program, the Affirmative Claims Management Program, the Affirmative Potentials Program, and the Tort and Special Claims Management Program, with updated versions as required. These are the only programs authorized for recording and reporting claims in the Army Claims System. Local modification of these programs is not authorized.

### 13-8. Reporting requirements

In accordance with paragraph 13-7, each CONUS area claims office and OCONUS claims processing office with approval authority must submit a monthly claims data upload to USARCS. OCONUS area claims offices and foreign claims commissions with a supervising command claims service will submit monthly claims data uploads through their respective command claims service to USARCS.

a. The monthly data upload for each claims office (except USACE claims offices) consists of electronically transmitted automation data for tort claims and/or personnel claims. A copy of the two-page SJA report from the tort claims program is submitted directly to the Tort Claims Division, USARCS. For USACE claims offices that do not process personnel or affirmative claims, the monthly data upload will consist only of tort claims data.

b. The tort claims monthly data upload will be prepared by each claims office by the close of business of the last business day of the month. The personnel claims monthly data upload will be prepared by each claims office on the first working day of the month. The data upload will be forwarded to USARCS (or to the appropriate OCONUS command claims service in accordance with local directives) on the first working day of the month.

c. Claims offices are not required to send a monthly data upload for any of the two claims management programs if there are no data changes from the previous monthly data upload for that program. However, claims offices must send a written negative report so that USARCS can account for each claims office on a monthly basis. A short letter, memorandum, or electronic message will suffice. For affirmative claims, see paragraph 13-10.

### 13-9. Error reports

USARCS will provide field claims offices with monthly error

reports listing claims records that cannot be loaded into the USARCS database due to data entry errors or omissions. Errors listed on the error reports must be corrected before the next regular monthly reporting cycle.

### **Section III**

#### **Affirmative Claims Report**

##### **13-10. Preparation**

*a. Affirmative Claims Report.* Army claims offices that process affirmative claims must provide USARCS with a DA Form 2938-R (Affirmative Claims Report) or computer generated report on a monthly basis. Reports will be submitted through the SJA or senior judge advocate.

*b. Journal.* Each Army claims office should also maintain an affirmative claims journal as a source document for the data to be entered on the monthly report. Reportable information concerning the administration of medical or property claims in favor of the Government includes, but is not limited to, assertions, collections, compromises, waivers, transfers, and terminations of claims.

*c. Monthly report.* Claims personnel must indicate on the monthly report the amounts deposited locally for real property damage recoveries.

### **Section IV**

#### **Management of Claims Expenditure Allowance**

##### **13-11. General**

Each claims settlement or approval authority who has been furnished a Claims Expenditure Allowance (CEA) by the USARCS budget office is responsible for managing that CEA. Sound fiscal management includes knowing at all times how much of the CEA has been obligated, its remaining balance, and assessing each month whether the balance will cover claims obligation needs in the local office for the remainder of the current fiscal year.

##### **13-12. Claims expenditure allowance reporting requirement**

OCONUS Command Claims Services and CONUS claims offices having a CEA will provide a timely monthly status report regarding their financial operations to USARCS, ATTN: JACS-ZXB in the manner described in DA Pam 27-167, paragraph 13-12a.

##### **13-13. Solatia payment**

Payment of solatia in accordance with local custom as an expression of sympathy toward a victim or his family is common in some overseas commands (see DA Pam 27-162, chap 10). Such payments will not be made from the Claims CEA, but rather from local operation and maintenance funds pursuant to directives established by the appropriate commander for the country concerned. This applies even where a command claims service is directed to administer the command's solatia program. See discussion of solatia paid pursuant to the Foreign Claims Act in paragraph 10-10 of this publication and of DA Pam 27-162.

## **Chapter 14**

### **Affirmative Claims**

#### **Section I**

##### **General**

##### **14-1. Authority**

*a. Federal statutory authority.*

(1) *The Federal Claims Collection Act.* The Federal Claims Collection Act (FCCA) is set forth at 31 USC 3711, as amended by the Debt Collection Act of 1982, PL 97-365, 96 Stat. 1749 (25 October 1982), PL 101-552, 104 Stat. 2736 (15 November 1990) and the Federal Debt Collection Improvement Act of 1996, PL 104-134, 110 Stat. 1321 (26 April 1996). It states that Federal agencies

will try to collect all claims of the United States for money or property. Among other things, it provides a basis for agencies to recover for damage to Government property.

(2) *Federal Medical Care Recovery Act.* The Federal Medical Care Recovery Act (FMCRA) is set forth at 42 USC 2651-53, as amended by the National Defense Authorization Act for Fiscal Year 1997, PL 104-202, section 1075, 110 Stat. 2422. The FMCRA provides for the recovery of the reasonable value of medical care furnished by the United States on account of injury or disease incurred under circumstances creating tort liability upon some third person. Effective 23 September 1996, under the FMCRA, the United States also has the right to recover the costs of pay provided to a soldier who is tortiously injured by another. The FMCRA is implemented by Executive Order 11060 (9 November 1962) and 28 CFR 43; the Federal Claims Collection Standards (4 CFR 101-104) also apply, as appropriate. However, some procedures appropriate for liquidated debts may not be appropriate for unliquidated claims.

(3) *Section 1095, United States Code, title 10.* 10 USC 1095 provides authority for military treatment facilities (MTF) to collect the reasonable cost of health care from health insurance and Medicare supplemental policies. As amended by PL 101-510, 104 Stat. 1485 (5 November 1990), this statute provides claims offices with additional authority to assert claims against automobile insurers for care provided in a MTF on or after that date.

*b. Other authorities.*

(1) State workers' compensation laws.

(2) State hospital lien laws.

(3) Contract rights under terms of insurance policies including medical payment coverage, uninsured, underinsured and no-fault coverage.

(4) State automobile no-fault laws.

*c. OCONUS Authority.* To the extent that the United States has a right to recover the cost of medical care or property damage under a foreign country's laws or the provisions of a treaty or international agreement, the FMCRA, the FCCA, and 10 USC 1095 grant Army claims offices the power to assert claims in that country. In appropriate cases, the Department of Justice (DOJ) will initiate litigation in a foreign country to give effect to the Army's right to recover under that country's laws.

##### **14-2. Recovery judge advocate or recovery attorney**

*a. General.* A claims judge advocate (CJA) or attorney assigned responsibility for asserting affirmative claims may also serve as a recovery judge advocate (RJA) or recovery attorney, as appropriate. This designation may be in addition to, or in lieu of, serving as a CJA or claims attorney, depending on the local command needs and available personnel. When asserting affirmative claims is a full-time responsibility of a claims JA or attorney, the position title can also reflect the recovery function.

*b. Designation.*

(1) A command claims service may withhold designation authority within its area of operations or place reasonable restrictions on such designation by subordinate offices through appropriate command directives.

(2) The Commander, USARCS, may designate attorneys to perform affirmative claims duties for areas outside the responsibility of a command claims service or area claims office (ACO).

##### **14-3. Purpose and policy**

*a.* This chapter prescribes procedures for the administrative determination, assertion, collection, settlement, waiver and termination of claims in favor of the United States for damage to, loss of, or destruction of, Army property and for the recovery of the reasonable value of medical care furnished, or to be furnished, by the United States under the statutes cited in paragraph 14-1. Sound Governmental policy in the collection of claims of the United States for money or property requires aggressive agency collection action. Responsible officials within the DA will ensure that personnel asserting claims are properly trained and supported to take timely and effective action.

*b.* The chapter does not apply to the following:

(1) Claims between Federal agencies. If such a claim cannot be resolved by negotiation, it should be referred to the General Accounting Office (GAO).

(2) Maritime claims arising under chapter 8.

(3) Affirmative actions for nonmonetary relief (for example: evictions, specific performance, and injunctive relief).

(4) Claims arising out of contract (excluding breach of contract actions involving the attorney representation agreement—see para 14-14), or other transaction or activity involving either nonappropriated or appropriated funds.

c. The Judge Advocate (JA) or Staff Judge Advocate (SJA) of a command having a command claims service will prescribe procedures for implementing single service claims responsibility under Department of Defense Directive (DODD) 5515.8 and for implementing any provision in a treaty or international agreement that limits or provides special methods for asserting claims in favor of the United States. With the concurrence of the Commander, USARCS, the JA or SJA of a command having a command claims service is authorized to modify the procedures in this chapter to accommodate special circumstances. The JA or SJA will provide the Chief, Personnel Claims and Recovery Division, with a copy of all published guidance.

#### 14-4. Delegation of authority

Claims offices may accept the full amount asserted on an affirmative claim. Authority to take other action on an affirmative claim is as follows:

a. TJAG; TAJAG; the Commander, USARCS; and the Chief, Personnel Claims and Recovery Division, USARCS, or his or her delegatee may compromise or terminate collection action on a property damage claim asserted for \$100,000 or less; and may compromise, waive, or terminate collection action on a medical care claim asserted for \$100,000 or less.

b. The JA or SJA of a command having a claims service and, subject to the limitations imposed by them, the chief of a command claims service may compromise or terminate collection action on a property damage claim asserted for \$40,000 or less and may compromise, waive or terminate collection action on a medical care claim asserted for \$40,000 or less.

c. Unless authority is withheld by the Commander, USARCS, or the chief of a command claims service, the head of an ACO may—

(1) When the claim asserted is for \$25,000 or less, compromise up to \$15,000 of the amount asserted on a property damage or medical care claim (see para 14-17b). The Chief, Personnel Claims and Recovery Division, USARCS, may delegate further authority to compromise a property damage or medical care claim in appropriate circumstances.

(2) Terminate collection action on a property damage or medical care claim asserted for \$15,000 or less when further collection efforts are not feasible (see para 14-17c); or waive a medical care claim asserted for \$15,000 or less when collection in any amount will result in undue hardship to the injured party (see para 14-17d).

d. The head of an ACO may delegate authority to the head of a claims processing office (CPO) with approval authority to—

(1) Compromise up to \$5,000 of the amount asserted on a property damage or medical care claim, when the claim asserted is for \$25,000 or less (see para 14-17b).

(2) Terminate collection action on a property damage or medical care claim asserted for \$5,000 or less, when further collection efforts are not feasible (see para 14-17c).

(3) Waive a medical care claim asserted for \$5,000 or less, when collection in any amount will result in undue hardship to the injured party (see para 14-17d).

e. The head of an ACO, the head of a CPO with approval authority, or the chief of a command claims service, may redelegate up to \$5,000 of his or her authority to a RJA or recovery attorney.

f. In determining whether a settlement authority has authority to compromise, terminate, or waive a claim, consider the medical costs for all parties injured in a single incident as a single assertion; and

consider the total value of Government property damaged or destroyed in a single incident as a single assertion.

g. Only DOJ may approve claims involving—

(1) Compromise or termination of a medical care or property damage claim asserted for more than \$100,000; or waiver of a medical care claim asserted for more than \$100,000.

(2) Settlement actions previously referred to DOJ.

(3) Settlement where a third party has filed suit against the United States or the injured party for the same incident which gave rise to the claim of the United States.

h. The Commander, USARCS, or the Chief, Personnel Claims and Recovery Division, in consultation with DOJ, will approve all requests for compromise, termination or waiver involving unusual circumstances, a new point of law which may serve as a precedent, or a question of policy.

#### 14-5. Basic considerations

a. *The Federal Claims Collection Standards.* The Federal Claims Collection Standards (4 CFR parts 101-105) prescribe standards for compromising and litigating property damage claims and provide general guidance for compromising and litigating medical care claims.

b. *Time limitations.*

(1) *Property damage claims.* Claims asserted under the FCCA for damage to Government property are founded in tort and must be brought within 3 years after the action “first accrues” (28 USC 2415b).

(2) *Medical care claims asserted under the FMCRA or 10 USC 1095.* Claims asserted under the FMCRA or against an automobile liability insurer under 10 USC 1095 are also founded in tort and must be brought within three years after the action “first accrues” (28 USC 2415b). Claims asserted under 10 USC 1095 against a no-fault or personal injury protection insurer are presumably founded in a contract “implied in law” and must be brought within six years (28 USC 2415a).

(3) *Computing the statute of limitations.* Normally, a medical care claim “first accrues” on the initial date of treatment, and a property damage claim accrues on the date that the property was damaged. However, in computing the statute of limitation (SOL), 28 USC 2416(c) excludes the period of time before a U.S. official charged with the responsibility to act in the circumstances knows or should know that there is a basis for a claim. See *United States v. Hunter*, 645 F. Supp 758, 760 (N.D.N.Y. 1986). For example: the three year SOL would begin to run on most medical care claims paid by Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) no earlier than the date on which CHAMPUS received the bill from the provider.

(4) *Medical care claims asserted under State law.* Claims asserted against an insurer on a third party beneficiary theory or against a State workers’ compensation fund must be brought within the applicable State SOL which can range from one to six years. Normally, the SOL would begin to run when the injury occurred, rather than on the date of initial treatment.

c. *Applicable law.* Federal law does not define what constitutes a tort. Unless the RJA or recovery attorney can properly apply the law of another jurisdiction under choice of law rules, the RJA or recovery attorney will apply the law of the State or country where an incident occurred in determining whether the Government has a cause of action founded in tort.

d. *Concurrent claims.* Claims for damage to Army property (section II of this chapter) and claims for medical care (section III) may arise from the same incident.

(1) Concurrent claims will be processed under the section applicable to each. However, efforts should be made to include all medical care and property damage claims in a single demand against a third party or insurance company. Settlement agreements will be drafted so that settlement and release of one claim shall not prejudice settlement of the remaining claim.

(2) If the incident giving rise to a claim in favor of the United States also gives rise to a potential claim against the United States, the claim in favor of the Government will be asserted and processed

only by a claims approval or settlement authority who has jurisdiction to take final action on the claim against the Government.

#### 14-6. Claims against certain prospective defendants

a. *United States Government agencies.* RJAs or recovery attorneys will not assert a claim against any department, agency, or instrumentality of the United States. A self-insured non-appropriated fund instrumentality (NAFI), whether revenue producing, welfare, or sundry, is considered an agency or instrumentality of the United States; a private organization is not.

b. *Property damage assertions against soldiers and employees.* The report of survey system (AR 735-5, chapter 13) is the primary mechanism for collecting from a civilian employee or a soldier (including a U.S. Army Reserve (USAR) or Army National Guard (ARNG) soldier) for damage to Government property. Report of survey procedures should normally be used whenever applicable. AR 735-5 requires claims offices to assert property damage claims against soldiers and employees in two instances:

(1) *Damage caused by Privately Owned Vehicles.* Pursuant to AR 735-5, paragraph 14-29, if a report of survey approving authority assesses liability against a civilian who is not employed by the Government for negligently damaging Government property while using a privately owned vehicle (POV) and that individual does not make restitution, the approving authority will forward the approved report of survey to the claims office. The RJA or recovery attorney will assert a demand against the individual's liability insurance or against the individual for the full value of the damage.

(2) *Exhaustion of collection remedies.* Pursuant to AR 735-5, paragraph 14-4b, if a Defense Accounting Office (DAO) has exhausted all administrative mechanisms for collecting amounts assessed under a report of survey from a USAR soldier, ARNG soldier, or Reserve Officer Training Corps (ROTC) cadet for property issued from the Central Issue Facility, the DAO may refer the action to the servicing claims office for recovery action under the FCCA. The RJA or recovery attorney will assert such claims and initiate litigation if appropriate.

c. *Medical care assertions against soldiers, employees, family members, and retirees.*

(1) *Acting within scope of employment.* The RJA or recovery attorney will not assert a medical care claim against a tortfeasor who is either a member of the U.S. Armed Forces (including a Reserve Component member) or a Federal civilian employee acting within scope of employment, whether or not the employee or member of the U.S. Armed Forces has private insurance. See *U.S. v. Gilman*, 347 U.S. 507 (1954). "Scope of employment" is determined by the laws of the State where the injury occurred.

(2) *Persons not in scope who injure themselves.* A RJA or recovery attorney will not assert a claim based on a tort liability theory against a tortfeasor who is a member of the U.S. Armed Forces (including a Reserve component member), family member or retiree for the tortfeasor's own medical care; a person cannot create tort liability by injuring himself or herself. In such instances, however, the RJA or recovery attorney may assert a claim under 10 USC 1095 against the injured tortfeasor's personal injury protection or medical payments insurance coverage for medical care provided in a MTF.

(3) *Persons not in scope with liability insurance.* A RJA or recovery attorney may assert a medical care claim against the liability insurer of a service member, civilian employee, family member or retiree who injures some other person entitled to medical care. Intra-familial tort immunity would not preclude the RJA or recovery attorney from asserting a medical care claim based on a tort liability theory for care furnished to a tortfeasor's family members. (See, for example: *U.S. v. Haynes*, 445 F.2d 907 (5th Cir. 1971); *U.S. v. Moore*, 469 F.2d 788 (3rd Cir. 1972)). In order to reach the liability insurer per State law requirements, prior approval must be obtained from the Chief, Personnel Claims and Recovery Division, USARCS, before the RJA or recovery attorney asserts a claim directly against a member of the Armed Forces (including a Reserve Component

member), a DOD or DA civilian employee, a family member, or a retiree.

(4) *Persons not in scope with no insurance.* A RJA or recovery attorney may assert a medical care claim against a member of the U.S. Armed Forces (including a Reserve Component member), a Federal civilian employee, a family member or a retiree without insurance coverage with the approval of the Chief, Personnel Claims and Recovery Division, USARCS, or designee. Approval will be granted if there are aggravating circumstances, such as willful misconduct, and the tortfeasor has sufficient assets to satisfy both the injured victim and the Government's claim.

d. *Government contractors.* Some contracts have cost-plus or reimbursement provisions that require the Government to reimburse the contractor for many types of expenses. If it appears that the contract would require the Government to reimburse a contractor for money recovered on an otherwise meritorious affirmative claim, the RJA or recovery attorney will investigate the claim and coordinate with USARCS, referencing the specific contract clauses involved. The RJA or recovery attorney will assert other claims against Government contractors after verifying that the contract does not contain a reimbursement provision.

e. *Foreign entities.* The RJA or recovery attorney will investigate claims against foreign governmental entities, including political subdivisions, and international organizations. If an assertion appears appropriate, the RJA or recovery attorney will forward a recommendation to USARCS. The RJA or recovery attorney will assert claims against individual foreign prospective defendants unless such action is precluded by treaty or agreement.

f. *Army National Guard organizations and soldiers.* The RJA or recovery attorney will investigate claims arising from the tortious conduct of ARNG members. The RJA or recovery attorney will assert claims against ARNG members and their insurers in accordance with subparagraphs 14-6b and c above. If the ARNG members were acting within the scope of employment as State employees and an assertion against the ARNG organization's insurer appears appropriate, the RJA or recovery attorney will coordinate with USARCS.

## Section II Property Claims

### 14-7. General

a. Other regulations establish systems of property accountability and responsibility and provide for the administrative collection of charges from military and civilian personnel of the United States, and other individuals and legal entities from whom collection may be made without litigation. However, when the investigation results in a preliminary indication of pecuniary liability and no other method of collection is provided, refer the matter for action under this chapter. Make assertions under this section for the loss, damage, or destruction of—

(1) Property under DA control (AR 735-5).

(2) Property of the Defense Supply Agency in DA custody.

(3) Property of Army NAFIs (except Army-Air Force Exchange Service (AAFES) property unless a special agreement exists). (See AR 215-1.)

(4) Federal property made available to the ARNG (AR 735-5).

b. This section does not apply to—

(1) Claims for damage to property funded by civil functions appropriations.

(2) Reimbursements from agencies and instrumentalities of the United States for damage to property.

(3) Collection for damage to property by offset against the pay of employees of the United States, or against amounts owed by the United States to common carriers, contractors, and States.

(4) Claims by the United States against carriers, warehousemen, insurers, and other third parties for amounts paid in settlement of claims by soldiers and employees of the Army or Department of Defense (DOD) for loss, damage, or destruction of personal property while in transit or storage at Government expense arising under chapter 11.

#### 14-8. Repayment in kind

The RJA or recovery attorney may accept the repair or replacement of the property in lieu of payment of the claim. The staff officer responsible for the property must certify repair or replacement is accomplished before a release may be executed. The authority conferred by this paragraph is not limited to incidents involving motor vehicles.

#### 14-9. Property damage predemand procedures

*a. Identification of potential claims.* The RJA or recovery attorney will ensure that all potential property damage recovery claims are identified. Specifically, the RJA or recovery attorney will ensure that installation motor pools, housing and engineering staff sections, unit property custodians, and similar persons apprise the claims office of damage to DA property. Claims personnel will review Military Police blotters and reports, civilian news sources, reports of survey, magistrate court proceedings, line of duty and AR 15-6 investigations, and similar reports to identify additional property damage cases. A claims office designated as the ARNG point of contact for a State will coordinate with ARNG officials to ensure that ARNG units appoint unit claims officers and report back to the designated claims office any potential claims.

*b. Transfer of responsibility.* If another claims office is better situated to investigate and assert a property damage claim, the claims office will coordinate with that office. The Chief, Affirmative Claims Branch, USARCS, will resolve any disagreements. In addition, the office designated as the ARNG point of contact for a State will forward potential claims arising in another office's area of responsibility to that office.

*c. Investigation.* Claims personnel will investigate potential incidents, question witnesses to determine the facts and circumstances, and identify all available insurance coverage. Claims personnel may directly request assistance from other DOD claims offices. Claims personnel may also request an investigation of an incident by a unit claims officer for the unit or organization responsible for the damaged or destroyed property or, when the investigation may be more practically conducted by the claims officer of some other unit or organization, by another unit claims officer. If no other report has been prepared, the unit claims officer will prepare the report. Claims personnel will obtain a breakdown of costs from the custodian of the property.

*d. Closing potential claims without assertion.* If the RJA or recovery attorney determines there is no tort liability or the potential recovery is too small to be worth pursuing, he or she will dispose of the notification without asserting a claim. If a potential claim file was opened, claims personnel will annotate the basis for closing the potential claim on the chronology sheet referencing the Federal Claims Collection Standards.

*e. Asserting demands.* If there is a legal and factual basis for the Government to recover, claims personnel should notify both the tortfeasor and the tortfeasor's insurer. The assertion letter should outline the facts and cite the FCCA as the basis for recovery. The claims office may also cite local law. The claims office should assert the claim for the full costs to the Government, if known, or state that the costs are still being ascertained. Where appropriate, the assertion letter should also provide the option to repair the damaged property, or to replace it in kind.

### Section III

#### Medical Care Claims

#### 14-10. General

*a.* Army claims offices assert claims against tortfeasors and insurers for medical and dental care that is furnished to a member of the U.S. Armed Forces (including a Reserve Component member), a family member, or retiree at Army expense to treat an injury or disease resulting from tortious conduct. Army claims offices also assert claims against tortfeasors and insurers for any basic, special, or incentive pay provided to the soldier. The "costs of pay" are recoverable when the soldier is unable to perform any military

duties due to injuries caused by the wrongful conduct of a third party tortfeasor. Army claims offices also assert claims against insurers other than health benefits insurers, such as automobile insurance companies that provide no-fault and medical payments coverage and workers' compensation funds. Claims offices coordinate their efforts with the injured party's efforts to recover other damages from tortfeasors and insurers.

*b.* Claims offices will forward potential claims for medical care furnished to members of the U.S. Armed Forces (including Reserve Component members), family members, or retirees of the U.S. Air Force, Navy, or Marine Corps to the nearest installation or office of that service. As an exception to this rule, however, claims offices may assert and collect claims for medical care provided to retirees of another service and their family members if—

- Medical care was furnished at the local Army MTF.
- The incident giving rise to the claim occurred near the Army installation.
- The retiree resides near the Army installation.

In exceptional situations, the claims office must ensure that the retiree is not receiving care at another service's MTF. The claims office must also notify USARCS as well as the nearest installation or office of the retiree's service that it is handling the claim.

*c.* Potential claims for care provided to members of the Coast Guard are processed in accordance with a memorandum of agreement between DOD and the Department of Transportation (DOT). DOD and DOT will pursue claims for care provided in their MTFs, regardless of the beneficiary's branch of service. If a department collects an amount less than the interagency billing rate, the department whose beneficiary received the care is responsible for the difference. The department that provided the care will forward the file to the other department for further collection efforts.

*d.* In some instances, the Army and the Department of Veterans Affairs (DVA) will both pay for care provided to a soldier or retiree. The DVA, however, is precluded from asserting claims for service-connected injuries. Such cases will be handled as follows:

(1) If an injured soldier is discharged from the service (not medically retired), the claims office will assert claims for the reasonable value of medical care furnished at Army expense (including care furnished in a DVA facility) prior to a soldier's discharge. Claims offices will not assert for the value of medical care furnished at DVA expense after the soldier's discharge; however, the RJA or recovery attorney will consider future care provided by DVA in determining whether to approve a waiver or compromise.

(2) If a retiree is injured and receives some care paid for by the Army and other care in a DVA facility, the claims office will coordinate with the nearest DVA office and assert a claim for the full value of the care provided. The office will remit the amount recovered for care provided at DVA expense to the DVA.

#### 14-11. Recovery rights under the FMCRA

Pursuant to the FMCRA, the Government may pursue recovery of medical costs and the costs of pay under any of the following tactics:

*a. Subrogation.* The United States is subrogated to any rights or claims held by a person to whom the Government has provided medical care and wages (during periods of incapacitation) against the tortfeasor who caused him or her to be injured. As subrogee, the United States can recover from the wrongdoer the reasonable value of the medical care and the amount of pay the United States has furnished or will furnish the injured party.

*b. Intervention.* The United States can intervene in an injured party's suit against a tortfeasor or bring suit as the assignee of an injured party's right of action.

*c. Independent action.* The United States can assert administratively and litigate a medical care claim in its own name.

*d. Item of special damages.* The injured party's attorney can assert the Government's claim as an item of special damages in an injured party's suit against the tortfeasor. The RJA or recovery

attorney will determine the method to use based on the facts and circumstances of the case involved.

#### **14-12. Identification of potential medical care recovery claims**

##### *a. By medical treatment facility personnel.*

(1) The MTF commander will ensure that the claims office is notified of instances in which the MTF provides, or is billed by a civilian facility for, inpatient or outpatient care resulting from injuries (such as broken bones or burns arising from automobile accidents, gas explosions, falls, civilian malpractice, and similar incidents) that do not involve collections from a health benefits or Medicare supplemental insurer. Claims personnel will coordinate with MTF personnel to ensure that inpatient and outpatient records, and emergency room and clinic logs are properly screened to identify potential cases.

(2) The MTF commander will also ensure that the MTF does not release billings or medical records, or respond to requests for assistance with workers' compensation forms, without coordinating with the RJA or recovery attorney.

*b. By CHAMPUS fiscal intermediaries.* The CHAMPUS fiscal intermediary is required to identify and mail promptly claims involving certain diagnostic codes to the claims office designated as the State point of contact. The fiscal intermediary is required to provide the contact office with a personal injury questionnaire completed by the injured party and a copy of the CHAMPUS Explanation of Benefits showing the amount CHAMPUS paid on the claim.

(1) In accordance with chapter 5 of the CHAMPUS Fiscal Intermediary Operations Manual (October 1992), a fiscal intermediary must suspend payment on a claim with possible medical care recovery until the injured party properly completes the personal injury questionnaire. Within 15 working days after receiving and evaluating the completed questionnaire, the fiscal intermediary is required to dispatch possible medical care recovery cases to the appropriate claims office. The point of contact claims office must work with the fiscal intermediary to ensure claims are properly identified and forwarded in a timely manner. The claims office should document persistent problems and notify USARCS.

(2) Prior to settlement of a CHAMPUS claim, claims offices should contact the fiscal intermediary again to ensure all amounts paid for by CHAMPUS are included in the Government's assertion.

*c. By claims personnel.* The RJA or recovery attorney will ensure MTF comptroller, clinic, and patient administration division records are screened to identify potential medical care recovery cases. The RJA or recovery attorney will also coordinate with Navy and Air Force claims offices and MTFs to ensure they identify potential claims involving treatment provided to Army personnel. The RJA or recovery attorney will ensure all potential medical care recovery claims are identified. To the extent possible, claims personnel will review civilian police reports, Military Police blotters and reports, news reports, magistrate court proceedings, line of duty and AR 15-6 investigations and similar sources to identify other potential medical care recovery claims.

#### **14-13. Medical care procedures following identification**

*a. Opening potential claims.* Unless it is obvious from the notification documents that there is no potential recovery, claims personnel will open a potential claims file on each incident identified. The Affirmative Claims Management Program includes a "potentials database," which will be used to record potential claims.

##### *b. Transfer of responsibility.*

(1) Several claims offices may be notified of incidents involving more than one injured party or treatment at more than one facility. If a RJA or recovery attorney has reason to believe this has occurred, the RJA or recovery attorney will contact the other offices to determine which office has the most significant contacts and should assert the claim. The office closest to where the injury occurred is not necessarily the office with the most significant contacts. In the event offices cannot agree, they will refer the matter to the Chief, Affirmative Claims Branch, USARCS, for a decision. The claims

office will notify the MTF if it transfers responsibility for a claim the MTF referred.

(2) The office designated as the CHAMPUS or ARNG point of contact for a State will forward potential claims arising in another office's area of responsibility to that office.

(3) Within Europe, the U.S. Army Claims Service, Europe, has single service responsibility for processing all Army, Air Force, Navy, and Marine Corps medical care recovery claims arising under the FMCRA and 10 USC 1095 in Germany, Austria, and Switzerland.

*c. Investigation.* If MTF personnel have not already collected the necessary information, claims personnel will dispatch questionnaires to injured parties to determine the facts and circumstances and identify all available insurance coverage. Claims personnel will obtain medical records and billings to determine the value of the Government's claim, and will contact witnesses and consult with medical personnel as appropriate. RJAs or recovery attorneys may direct unit claims officers to investigate incidents and may request assistance from other DOD claims offices as needed.

*d. Closing potential claims without assertion.* If the RJA or recovery attorney determines there is no tort liability or possible recovery from an insurer or workers' compensation fund, or the potential recovery is too small to be worth pursuing, he or she will dispose of the notification without asserting a claim. If a potential claim file was opened, claims personnel will annotate the basis for closing the potential claim on the chronology sheet. If a MTF provided the notification, claims personnel will return the notification with a dated and signed notation, "per RJA or recovery attorney, no third party recovery."

*e. Asserting demands.* If there is a legal and factual basis for the Government to recover, claims personnel will assert a demand against each tortfeasor and insurer. Claims personnel should place tortfeasors and insurers on written notice of the Government's right to recover even if the injured party's attorney enters into a representation agreement (see subpara 14-14b for a discussion of cases addressing the use of representation agreements).

(1) *Automobile cases—tort liability.* If care was wholly or partly provided in a MTF on or after 5 November 1990, the claims office will assert demands against the tortfeasor and the liability insurer citing both the FMCRA and 10 USC 1095. If care was provided in a civilian hospital or was provided before 5 November 1990, the office will cite only the FMCRA as a basis for recovery.

(2) *Automobile cases—no tort liability.* If care was wholly or partly provided in an MTF on or after 5 November 1990, the claims office will assert demands against the injured party's personal injury protection, medical payments, or no-fault insurance, citing 10 USC 1095. If care was provided in a civilian hospital or was provided before 5 November 1990, the office will cite applicable State insurance law recognizing the United States as a third party beneficiary of an injured party's automobile insurance, if appropriate.

(3) *Automobile cases—multiple sources of recovery.* If the claims office can recover from the tortfeasor's automobile liability and from the injured party's non-liability coverage, the claims office should put both insurers on notice of the claim and should first attempt to collect from the no-fault insurer. If the tortfeasor is an uninsured motorist and the injured party has uninsured or underinsured motorists' coverage, the claims office should attempt to recover from the injured party's insurer while following the procedures in paragraph 14-16a. See paragraph 14-15 if the injured party has health benefits insurance.

(4) *Special rules applicable to CHAMPUS primary payers.* Pursuant to 10 USC 1079(j)(1) and 1086(g), workers' compensation and the injured party's no-fault, personal injury protection, medical payments, and uninsured or underinsured motorists' coverage are considered "primary" to CHAMPUS. Before the fiscal intermediary pays the injured party's medical bills and notifies the claims office to assert a claim against the tortfeasor, the fiscal intermediary is required to verify these "primary payers" have paid.

(a) If the fiscal intermediary overlooks such coverage, the claims office will immediately assert a demand against the injured party's insurer (or the workers' compensation fund), citing 10 USC



1079(j)(1) in addition to other sources of authority. If the insurer has already disbursed the policy limits to the injured party, the claims office will request repayment from the injured party. The claims office will return money recovered in this manner to CHAMPUS (see para 14-19e(2)).

(b) If the injured party or the injured party's insurer declines to pay and the claims office does not recover the full amount asserted from the tortfeasor's liability insurer, the claims office will forward the file to USARCS, which will refer the matter to the Office of CHAMPUS (OCHAMPUS) General Counsel. In this instance, the claims office will not waive or compromise any portion of the Government's claim because of undue hardship to the injured party without approval of the Chief, Personnel Claims and Recovery Division, USARCS.

(5) *On-the-job injuries.* The claims office will present claims for on-the-job injuries to the appropriate State workers' compensation office.

(6) *Other injuries.* Other instances giving rise to third party liability include gas explosions, malpractice by civilian physicians, slip-and-fall incidents, and product liability cases. Claims offices will assert demands against the tortfeasor and his or her insurer citing the FMCRA and/or 10 USC 1095, as appropriate.

*f. Determination of the amount asserted.*

(1) *Medical treatment facility costs.* Recovery for MTF care is based on diagnostic related group rates, and a single per-visit outpatient rate established by the Office of Management and Budget (OMB) and/or DOD. Claims personnel should obtain a billing from each MTF. The RJA or recovery attorney should, however, obtain information from the MTF registrar and adjust the amount asserted if it appears that the billings include inpatient days where the injured party was retained in the MTF for administrative purposes rather than medical needs.

(2) *CHAMPUS costs.* Recovery for inpatient care provided in civilian hospitals and paid through CHAMPUS is based on the CHAMPUS diagnostic related group rates, regardless of the actual costs. Rates for outpatient care are based on the CHAMPUS allowable charge for that medical service. Claims offices should assert for the amount that CHAMPUS paid even though this can sometimes exceed the amount that the civilian hospital billed.

(3) *Costs of pay.* When a third party tortiously injures a soldier, that soldier is often unable to perform any military duties for a period of time because of the injuries. Citing the FMCRA, claims officers should assert a demand against the tortfeasor to recover the "cost of pay" for the period in which the injured soldier is unable to perform military duties.

(4) *Ambulance services.* Ambulance and air ambulance services provided to soldiers, family members, and retirees are medical costs within the meaning of the FMCRA and 10 USC 1095, but they are not included in the OMB or DOD rates. Fixed wing air evacuation rates are now set out by the OMB. Claims offices should try to obtain a specific breakdown of costs from the MTF or the unit providing the services and include these in the amount asserted.

(5) *Burial expenses.* If a soldier dies from injuries received and is buried at Government expense, the installation Mortuary Affairs Office completes DD Form 2063 (Record of Preparation and Disposition of Remains (within CONUS)) and itemizes expense data on this form. While burial expenses are not medical care within the meaning of the FMCRA or 10 USC 1095, many insurance policies provide for the payment of such expenses. Claims offices may assert a demand for burial expenses incurred by the Government if the insurance contract provides for payment of such expenses and State law recognizes the United States as a third party beneficiary of the contract. Claims personnel should, however, be highly sensitive to the possibility that the insurance proceeds might be inadequate and should consider waiving or compromising the Government's claim in appropriate cases to avoid undue hardship to the next of kin. Additionally, claims personnel should be especially aware that even the mere assertion of a claim for burial expenses may have a

traumatic effect on the next of kin and prove detrimental to long term interests of the U.S. Army.

#### **14-14. Relations with the injured party**

a. Claims personnel will advise the injured party and/or his or her attorney that—

(1) The United States has a right to recover, from responsible third parties, the reasonable value of medical care and pay that has been furnished or will be furnished in the future.

(2) The injured party is required to cooperate with the United States by providing a complete statement of the facts and circumstances surrounding the injury, information about any legal action brought against any prospective defendant, and information about and copies of any insurance policies. A failure to cooperate may adversely affect the beneficiary's future enjoyment of medical benefits (see, for example, 32 CFR 220.9).

(3) The injured party should not execute a release or settle any claims without notifying the RJA or recovery attorney.

(4) The injured party may consult with a legal assistance attorney if he or she is otherwise entitled to legal assistance.

b. Claims personnel should attempt to coordinate action to collect the claim of the United States with the injured party's action to collect his or her own claim against a tortfeasor or insurer.

(1) The RJA or recovery attorney may enter into a written agreement with the injured party's attorney to assert the Government's claim and to include it as an item of special damages if the injured party sues. The agreement must state that the Government will not pay counsel fees, and the attorney will not compute his or her fee based on the Government's portion of any recovery. The agreement must also state that the Government must be consulted regarding any potential compromise and must agree to any settlement.

(2) The RJA or recovery attorney should coordinate with the injured party's attorney to ensure any request for compromise or waiver of the Government's claim is considered as far in advance of settlement as is practicable.

(3) The RJA or recovery attorney may arrange to make Army witnesses available for the injured party's attorney if it is in the Government's best interests to do so. Any such request must be submitted as far in advance as practicable. The appearance of present and former DA military and civilian personnel as witnesses is governed by AR 27-40, chapter 7.

(4) The RJA or recovery attorney should immediately terminate a representation agreement and independently pursue the Government's right to recover if the injured party's interests conflict with the Government's interests, or if the injured party's attorney fails to keep the RJA or recovery attorney informed of developments or otherwise acts in a manner inconsistent with representing the Government's interest.

c. If the injured party or his or her attorney fails to cooperate with the claims office, the RJA or recovery attorney is authorized to direct the MTF personnel to withhold billing information and should vigorously pursue the Government's right to recover. In addition, as outlined in 32 CFR 537.23, the RJA or recovery attorney is authorized to direct the MTF to withhold release of medical records until the injured party provides the statement and other information required by paragraph 14-14a(2) above. The RJA or recovery attorney may not, however, direct the MTF to withhold medical records if the injured party's attorney merely refuses to enter into a representation agreement. The release or retention of any records requested in a subpoena must be processed in accordance with AR 27-40, chapter 7.

d. If the injured party's attorney improperly withholds or disburses money collected on behalf of the Government, the RJA or recovery attorney should immediately, after appropriate coordination in accordance with AR 27-40 and AR 27-1, initiate action to recover the money owed, through—

- Litigation.
- State disciplinary proceedings.

- Breach of contract action (if attorney representation agreement has been signed).

e. Claims personnel may obtain an assignment from the injured party or his or her attorney for the reasonable value of the care and pay the United States provided if this will facilitate collection. The absence of an assignment does not affect the Government's independent right under the FMCRA, however, and an assignment is normally not necessary.

#### **14-15. The Medical Treatment Facility Third Party Collection Program**

DOD claims offices and MTFs manage complementary programs to recover for medical care furnished at DOD expense. Pursuant to a memorandum of agreement (MOA) between TJAG and The Surgeon General (see DA Pam 27-162, figure 14-2) and an informal understanding with Navy and Air Force authorities, claims offices and MTFs support each other's recovery programs.

a. As provided in the MOA, claims offices will recover from automobile and other insurers, while MTFs will recover from health benefits and Medicare supplemental insurance.

b. As provided in the MOA, MTFs will obtain insurance and other relevant information from persons receiving inpatient and outpatient treatment for injuries resulting from an accident. MTF personnel will also screen emergency room logs, clinic records, and patient admission information to identify accident cases. MTFs will refer these cases to local claims offices in a timely manner, assist local claims offices in obtaining medical records and cost computations, and route requests for medical records from injured parties and attorneys through the RJA or recovery attorney.

c. In return, claims offices will notify the MTFs of the final disposition of cases referred, deposit money recovered under 10 USC 1095 to the operations and management (O&M) account of the MTF that provided the care (see para 14-19d), and report the amounts deposited to an MTF's account on a monthly basis.

d. As provided in the MOA, the head of each claims office may enter into a local MOA with his or her supporting Army MTF commander. Such agreements should cover procedures, the degree of staffing each office will provide, and time frames for providing records or information. Such agreements may also provide for the MTF to assist the claims office's medical care recovery effort, either by giving back money deposited by the claims office into the MTF's O&M account to the claims office, or by providing personnel or other support. Any personnel provided or money returned to the claims office under such an agreement will only be used to support affirmative claims collection efforts.

e. If care was wholly or partly provided in a MTF on or after 5 November 1990 and recovery is possible from both a health benefits insurer and an automobile insurer, the MTF will first attempt to collect from the health insurer. If the MTF cannot recover the full value of the Government's claim from the health insurer, the MTF will forward the claim file to the installation claims office for collection from the automobile insurer.

f. An individual JAG office may also have a local MOA with its MTF permitting the local claims office, rather than or in addition to the medical center JA, to take legal action on Third Party Collection Program claims.

### **Section IV Recovering and Depositing Claims**

#### **14-16. Installation demand procedures after initial assertion**

a. *Uninsured motorists.* If the tortfeasor is an uninsured motorist, affirmative claims personnel will assert a demand against the tortfeasor, and, if the tortfeasor does not pay promptly, request suspension of the tortfeasor's driving and registration privileges under a State financial responsibility law. If collection from the tortfeasor is not feasible, claims personnel will pursue recovery from any State uninsured motorist's fund or, on a medical care

claim, from the injured party's uninsured motorist's coverage, personal injury protection, or medical payments coverage.

b. *Periodic review of pending claims.* Whether or not the injured party's attorney has agreed to assert the Government's claim, claims personnel will review the status of pending claims every 60 days and take follow-up action as appropriate. Specifically, claims personnel should periodically contact the injured party's attorney to determine the status of pending cases; call or send follow-up letters to an insurer or tortfeasor who fails to respond to a demand or provides an unacceptable response; and document follow-up action on the claims chronology sheet.

c. *Adjusting the amount asserted.* The RJA or recovery attorney should adjust the amount asserted on a claim as further medical treatment or pay is provided to the beneficiary. The RJA or recovery attorney should delay settlement if it appears that extensive treatment is necessary or should consider this in negotiating a settlement.

d. *Forwarding claims to higher authorities.* The RJA or recovery attorney or head of a claims office will terminate action or will act on requests for waiver or offers to compromise that are within his or her settlement authority. See paragraph 14-4. If a higher settlement authority must act on the claim, the RJA or recovery attorney will forward a completed medical care recovery worksheet to the ACO (if that office has authority to take action) or to USARCS, as appropriate. When time is critical in securing a settlement, a RJA or recovery attorney may contact USARCS telephonically for authorization to waive or compromise a claim. However, the RJA or recovery attorney should be prepared to send supporting documentation via facsimile or electronic mail. At least six months prior to the expiration of the SOL, the RJA or recovery attorney should contact USARCS for guidance on disposing of any claim that cannot be recovered in full, compromised, terminated, or litigated.

#### **14-17. Settling affirmative claims**

Claims personnel will reflect the basis for any settlements other than payment in full in the claims file. Note that under some circumstances, a settlement authority may not waive or compromise a claim that he or she would normally have authority to act on. See paragraph 14-4g and h.

a. *Payment in full.* A settlement authority may settle a medical care or property damage claim by recovering the full amount of the Government's claim as a lump sum, through installment payments, or as a repair in kind on a property damage claim. An offer for the full amount of available insurance would not pay in full a claim asserted for a greater amount, and the RJA or recovery attorney would have to follow compromise procedures.

b. *Compromise.*

(1) If there are difficulties in recovering on a medical care or property damage claim (as defined in the Federal Claims Collection Standards, 4 CFR part 103), a settlement authority may accept less than the amount asserted from a tortfeasor or insurer for the convenience of the Government. Acceptable bases for compromise for the convenience of the Government include inability of the tortfeasor to pay, insufficient insurance, probability that the Government will be unable to prove its case, or collection costs that are not commensurate with the amount compromised.

(2) If the injured party or the injured party's attorney requests waiver or compromise of a medical care claim, a settlement authority may accept an amount less than the amount asserted to equitably apportion the available funds and avoid undue hardship to the injured party. To do so, the settlement authority must consider the fair value of the injured party's claim, the future value of care provided by the United States, and the potential recovery available. In evaluating a request, the settlement authority may consider an offer by the injured party's attorney to reduce his or her fee, but should not make this a condition for granting a request. Prior to approval of any compromise based on undue hardship, the injured party must provide the following information:

(a) Detailed information on what funds are available for recovery.

(b) Reasonable value of the injured party's claim for permanent

injury, pain and suffering, decreased earning power, and any other special damages.

(c) Military, DVA, and Social Security disability, and any other Government benefits accruing to the injured party.

(d) Probability and amount of future medical expenses of the Government and the injured party.

(e) Present and prospective assets, income, and obligations of the injured party and those dependent on him or her.

(f) A statement regarding the financial condition of the debtor.

c. *Termination of collection action.* If there are difficulties in recovering on a medical care or property damage claim (as defined in the Federal Claims Collection Standards, 4 CFR 104.3), a settlement authority may close the claim without recovery for the convenience of the Government. Acceptable bases for terminating collection action include—

- Lack of legal merit to the claim.
- Lack of evidence to substantiate the claim.
- Costs of recovery that will exceed the amount recoverable.
- Inability to locate the debtor in instances where the likelihood of collection is too remote to justify retention of the file.

d. *Waiver.* If the injured party or the injured party's attorney requests waiver or compromise of the Government's claim, a settlement authority may close a medical care claim without recovery where collection of any part of the Government's claim will result in undue hardship to the injured party. Prior to granting a request for waiver, the settlement authority will consider the factors outlined in subparagraph b(2) above and require the injured party to provide the items listed in subparagraph b(2) above. Property damage claims may not be waived; rather, they are terminated.

#### 14–18. Litigation

If a tortfeasor or insurer refuses to settle, or if an injured party's attorney improperly withholds funds, the RJA or recovery attorney must consider litigation to protect the interests of the United States. Litigation is particularly appropriate if a particular insurer consistently refuses to settle claims, or if the Government's interests are not adequately represented on a large claim.

a. RJAs or recovery attorneys must maintain close contact with local U.S. Attorney's Offices to ensure these offices are willing to initiate litigation on cases. RJAs or recovery attorneys are encouraged to obtain appointments as Special Assistant U.S. Attorneys.

b. In order to directly initiate or intervene in litigation, a RJA or recovery attorney must prepare a litigation report and formally refer the case through the Affirmative Claims Branch, USARCS, and the Litigation Division, OTJAG (as required by AR 27-40, chap 5), to the U.S. Attorney. While the RJA or recovery attorney should attempt to initiate litigation at least six months before the expiration of the SOL, the RJA or recovery attorney may contact USARCS telephonically if SOL problems necessitate quick action on a case. The RJA or recovery attorney should also contact USARCS if a U.S. Attorney is reluctant to pursue an important case. An injured party's attorney may represent the Government's interest in litigation without any special coordination.

c. DOJ requires all cases involving damage to Government property of \$200,000 and under to go through the DOJ Central Intake Facility in Silver Spring, Maryland, before going to a U.S. Attorney for litigation. Forward the agency referral package cover sheet and all documentation normally provided to the U.S. Attorney on all such cases to USARCS, who in turn will forward them to the Central Intake Facility through the Litigation Division, OTJAG, as appropriate.

#### 14–19. Administrative matters

a. *Receipts.* The RJA or recovery attorney may provide a receipt for payment.

b. *Releases.* The RJA or recovery attorney may execute a release acknowledging that the Government has received payment in full of the amount asserted or compromise amount agreed upon, or the

final installment payment; and should use a release similar to that shown in DA Pam 27-162, figures 14-5 and 14-6. However, the RJA or recovery attorney may not execute either an indemnity agreement or a release which prejudices the Government's right to recover on other claims arising out of the same incident without the approval of the Chief, Personnel Claims and Recovery Division, USARCS. In addition, the RJA or recovery attorney may not execute a release that purports to release any claim that the injured party may have other than for medical care furnished or to be furnished by the United States. The RJA or recovery attorney will not execute a release if the Government's claim is waived or terminated.

c. *Depositing property damage recovery.*

(1) *For damage to real property.* Monies recovered for damage to appropriated fund property will be deposited into the installation account available for the repair or replacement of real property (10 USC 2782).

(2) *For damage to appropriated fund property (other than real property).* Monies recovered for damage to appropriated fund property (other than real property) will be deposited to Account 21R3019 (Recoveries for Government Property Lost or Damaged).

(3) *For damage to NAFI property.* Monies recovered for damage to NAFI property will be returned to the NAFI. If the NAFI no longer exists, forward the money to HQDA (DAAG-NAF), Alexandria, VA 22331-0321. Checks should be made payable to the NAFI or, if it no longer exists, to the Army Morale, Welfare, and Recreation Fund.

(4) *For damage to Army Stock Fund or Defense Business Operations Fund property.* Monies recovered for damage to property belonging to one of these funds will be returned to that fund unless the fund has charged the cost of repair or replacement to an appropriated fund account. The Defense Business Operations Fund replaced the Army Industrial Fund.

(5) *For damage to Government housing.* Monies recovered for damage to Government housing caused by a soldier's abuse or negligence (or by a soldier's family member or guest of the soldier) will be deposited into that installation's family housing O&M account.

d. *For recovery of pay provided to a soldier during periods of incapacitation.* Monies recovered for the costs of pay provided to a soldier injured by the tortious acts of another shall be credited to the local O&M account that supports the command, activity, or other unit to which the soldier was assigned at the time of the injury.

e. *Depositing medical care recovery.*

(1) *To a medical treatment facility account.* CONUS and OCONUS claims offices and command claims services will deposit money recovered from an automobile insurer for medical care provided in a MTF on or after 5 November 1990 to the O&M account of the Army, Navy, or Air Force MTF that provided the care. For claims asserted on or after 30 November 1993, CONUS and OCONUS claims offices and command claims services will deposit into the appropriate MTF's O&M account, money recovered under any provision of law from any payor for medical care provided in a MTF.

(2) *To the General Treasury.* Money recovered from the following sources will be deposited in the Miscellaneous Receipts account, 21R3210.0008:

(a) Directly from tortfeasors for claims asserted before 30 November 1993 for care provided in a MTF.

(b) From insurers other than automobile insurers for claims asserted before 30 November 1993 for care provided in a MTF.

(c) From automobile insurers for care provided in a MTF prior to 5 November 1990.

(d) From insurers for care provided in a civilian hospital and paid by CHAMPUS.

(3) *Apportionment of medical care recovery between accounts.* Only money recovered under the provisions of 10 USC 1095 can be deposited into a MTF account. Claims offices will often have to apportion money recovered among different accounts.

(a) *Apportioning money between medical treatment facility accounts and the General Treasury.* If care was provided by both a

MTF and a civilian hospital and the amount recovered is less than the amount asserted, deposit money to the MTF's account first in accordance with the preceding paragraph and deposit any remaining money to the General Treasury.

*(b) Apportioning money between two or more medical treatment facility accounts.* If care was provided by two or more MTFs on or after 5 November 1990 and the claims office recovers less than the amount asserted, the claims office should give each MTF a pro rata share of the money recovered. For example: if MTF 1 provided \$2,000 worth of care and MTF 2 provided \$1,000 worth of care, the claims office will deposit \$800 of a \$1,200 recovery to MTF 1 account and the remaining \$400 to MTF 2 account. Similarly, if the claims office recovers an amount less than that asserted for medical care expenses and costs of pay provided, the claims office should give a pro rata share of the money recovered to both the MTF and the appropriations that support the injured soldier's unit.

*f. Fiscal Integrity.* Field claims offices must reconcile the property damage and medical care recovery accounts with their servicing DAOs. Field claims offices must ensure that their deposits have been credited to the proper accounts and that these accounts have not been improperly charged. All accounts must be reconciled at the end of the fiscal year.

*g. Disposition of claims files.* When action on a claim is completed, dispose of the file under AR 25-400-2, file number 27-20k (property damage).

## **Appendix A References**

### **Section I Required Publications**

#### **AR 27-40**

Litigation. (Cited at paras 14-14 and 14-18.)

#### **AR 37-103**

Disbursing Operations for Finance and Accounting Offices. (Cited at paras 11-24 and 12-3)

#### **AR 215-1**

Nonappropriated Fund Instrumentalities and Morale, Welfare, and Recreation Activities. (Cited at paras 12-3, 12-9 and 14-7.)

#### **AR 405-15**

Real Estate Claims Founded upon Contract. (Cited at 2-28.)

#### **DA Pam 27-162**

Claims Procedures. (Cited throughout.)

### **Section II Related Publications**

#### **AR 10-72**

Field Operating Agencies of the Judge Advocate General

#### **AR 11-2**

Management Control

#### **AR 15-6**

Procedures for Investigating Officers and Boards of Officers

#### **AR 25-55**

The Department of the Army Freedom of Information Act Program

#### **AR 25-400-2**

The Modern Army Recordkeeping System (MARKS)

#### **AR 27-1**

Legal Services: Judge Advocate Legal Services

#### **AR 40-3**

Medical, Dental, and Veterinary Care

#### **AR 40-68**

Quality Assurance Administration

#### **AR 210-130**

Laundry and Dry Cleaning Operations

#### **AR 340-21**

The Army Privacy Program

#### **AR 608-10**

Child Development Services

#### **AR 735-5**

Policies and Procedures for Property Accountability

#### **DA Pam 27-17**

Procedural Guide for Article 32(B) Investigating Officer

#### **DFAS-IN Reg 37-1**

Finance and Accounting Policy Implementation (available online at <http://www.asafm.army.mil>)

#### **DOD 4500.34-R**

Personal Property Traffic Management Regulation

#### **DOD 4525.6-M**

DOD Postal Manual (Volume I)

#### **DODD 5515.8**

Single-Service Assignment of Responsibility for Processing of Claims

#### **DODD 5515.9**

Settlement of Tort Claims

#### **DODD 5515.10**

Settlement and Payment of Claims under the Military Personnel and Civilian employees' Claims Act of 1964

### **Section III Prescribed Forms**

This section contains no entries.

### **Section IV Referenced Forms**

#### **DA Form 1208**

Report of Claims Officer

#### **DA Form 1666**

Claims Settlement Agreement

#### **DA Form 1667**

Claims Journal for (Personnel) (Tort) (Affirmative) Claims

#### **DA Form 2028**

Recommended Changes to Publications and Blank Forms

#### **DA Form 2938-R**

Affirmative Claims Report (LRA)

#### **DD form 619-1**

Statement of Accessorial Services Performed (Site Delivery and Reweigh)

#### **DD Form 788**

Private Vehicle Shipping Document for Automobile

#### **DD Form 1348-1A**

Issue Release/Receipt Document

#### **DD Form 1840 and 1840-R**

Notice of Loss or Damage

#### **DD Form 1842**

Claim for Loss or Damage to Personal Property Incident to Service

#### **DD Form 1843**

Demand on Carrier/Contractor

#### **DD Form 1844**

List of Property and Claims Analysis Chart

#### **DD Form 2063**

Record of Preparation and Disposition of Remains (within CONUS)

#### **DD Form 2526**

Case Abstract for Malpractice Claims

#### **SF Form 95**

Claim for Damage, Injury or Death

## **Appendix B**

### **Management Control Evaluation Checklist**

#### **B-1. Function.**

The function covered by this checklist is claims processing procedures.

#### **B-2. Purpose.**

The purpose of this checklist is to assist claims service and claims office supervisors in evaluating their key management controls. It is not intended to cover all controls.

#### **B-3. Instructions.**

Answers must be based on the actual testing of key management controls (for example, document analysis, direct observation, sampling, and simulation). Answers that indicate deficiencies must be explained and corrective action indicated in supporting documentation. These management controls must be evaluated at least once every five years. Certification that this evaluation has been conducted must be accomplished on DA Form 11-2-R (Management Control Evaluation Certification Statement).

#### **B-4. Test Questions.**

*a.* Do claims supervisors regularly monitor and report all obligations against their claims expenditure allowance (CEA), and, where necessary, take corrective action to ensure only authorized claims are charged against the claims open allotment?

*b.* Are claims payments made only to proper claimants with cognizable and meritorious claims?

*c.* Are procedures in place to ensure affirmative claims are asserted within the statute of limitations and reviewed every 60 days?

*d.* Are demands for recovery against third parties properly documented, to include proper calculation of the liability, prior to dispatch to carriers?

#### **B-5. Supersession.**

This checklist replaces the checklist for AR 27-20, Claims, previously published in DA Circular 11-90-1.

#### **B-6. Comments.**

Help make this a better tool for evaluating management controls. Submit comments to Office of The Judge Advocate General, ATTN: DAJA-PT, 2200 Army Pentagon, Washington, DC 20310-2200.

## Glossary

### Section I Abbreviations

#### AAFES

Army and Air Force Exchange Service

#### AAO

area action officer

#### ACO

area claims office

#### AEA

Admiralty Extension Act

#### AFIP

Armed Forces Institute of Pathology

#### AMCSA

Army Maritime Claims Settlement Act

#### AMEDD

Army Medical Department

#### APF

appropriated funds

#### APO

Army Post Overseas

#### app

appendix

#### AR

Army regulation

#### ARNG

Army National Guard

#### attn

attention

#### AWOL

absent without leave

#### CEA

claims expenditure allowance

#### CFR

Code of Federal Regulations

#### CG

commanding general

#### chap

chapter

#### CHAMPUS

Civilian Health and Medical Program of the Uniformed Services

#### CJA

claims judge advocate

#### CLAIMS

Claims Legal Automated Information Management System

#### COE

Chief of Engineers

#### CONUS

continental United States

#### CPO

claims processing office

#### DA

Department of the Army

#### DAO

Defense Accounting Office

#### DD

Department of Defense (form)

#### D.D.C.

District Court District of Columbia

#### DECA

Defense Commissary Agency

#### DFAS

Defense Finance and Accounting Service

#### DOD

Department of Defense

#### DODD

Department of Defense Directorate

#### DOHSA

Death on the High Seas Act

#### DOJ

Department of Justice

#### DPM

direct procurement method

#### DRMO

Defense Reutilization and Marketing Office

#### DVA

Department of Veterans Affairs

#### ext

extension

#### FAR

Federal Acquisition Regulation

#### FCA

Foreign Claims Act

#### FCC

Foreign Claims Commission

#### FCCA

Federal Claims Collection Act

#### FCCP

family child-care provider

#### FECA

Federal Employees Compensation Act

#### FM

field manual

#### FMCRA

Federal Medical Care Recovery Act

#### FOIA

Freedom of Information Act

#### FPO

fleet post office

#### FRCA

Federal Rules of Civil Procedures

#### FTCA

Federal Tort Claims Act

#### FTNGD

full-time National Guard duty

#### GAO

General Accounting Office

#### GBL

Government bill of lading

#### GC

General Counsel

#### GMCA

general court martial convening authority

#### GOV

Government-owned vehicle

#### GS

general schedule

#### HCP

health care providers

#### HQDA

Headquarters, Department of the Army

#### IDN

initial distribution number

#### IDT

inactive-duty training

#### IME

independent medical examination

#### IO

investigating officer

#### ITGBL

international through Government bill of lading

#### JA

judge advocate

#### JAGC

Judge Advocate General's Corps

#### JFTR

Joint Federal Travel Regulations

#### JTR

Joint Travel Regulation

#### LAAWS

Legal Automated Army Wide System

**LSHWCA**  
Longshore and Harbor Workers' Compensation Act

**MACOM**  
major Army command

**MCA**  
Military Claims Act

**MCI**  
medical claims investigator

**MCJA**  
medical claims judge advocate

**MCSA**  
Maritime Claims Settlement Act

**MEDCOM**  
United States Army Medical Command

**MEDDAC**  
medical department activity

**MOA**  
memorandum of agreement

**MOU**  
memorandum of understanding

**MTF**  
medical treatment facility

**NAF**  
nonappropriated fund

**NAFI**  
Nonappropriated Fund Instrumentality

**NATO**  
North Atlantic Treaty Organization

**NGCA**  
National Guard Claims Act

**NGB**  
National Guard Bureau

**NTS**  
nontemporary storage

**O&M**  
operation and maintenance

**OCHAMPUS**  
Office of Civilian Health and Medical Program of the Uniformed Services

**OCONUS**  
outside continental United States

**OSJA**  
Office of the Staff Judge Advocate

**OTJAG**  
Office of The Judge Advocate General

**OMB**  
Office of Management and Budget

**PA**  
Privacy Act

**pam**  
pamphlet

**para**  
paragraph

**PCA**  
Personnel Claims Act

**PCE**  
potentially compensable event

**PCS**  
permanent change of station

**PED**  
pre-existing damage

**PL**  
public law

**POV**  
privately owned vehicle

**PVA**  
Public Vessels Act

**RCP**  
replacement-cost protection

**RIMP**  
Risk Management Program

**RJA**  
recovery judge advocate

**RM**  
risk management

**ROTC**  
Reserve Officer Training Corps

**RSMO**  
Regional Storage Management Office

**SA**  
Secretary of the Army

**SF**  
standard form

**SIAA**  
Suits in Admiralty Act

**SJA**  
staff judge advocate

**SOFA**  
Status of Forces Agreement

**SOL**  
statute of limitations

**SPCMCA**  
special court martial convening authority

**stat**  
statute

**subpara**  
subparagraph

**TAJAG**  
The Assistant Judge Advocate General

**TDY**  
temporary duty

**TGBL**  
through Government bill of lading

**TIAS**  
Treaties and Other International Acts Series

**TJAG**  
The Judge Advocate General

**TO**  
transportation officer

**UCMJ**  
Uniform Code of Military Justice

**UPS**  
United Parcel Service

**U.S.**  
United States

**USACE**  
United States Army Corps of Engineers

**USACSEUR**  
United States Army Claims Service, Europe

**USAFCS-K**  
United States Armed Forces Claims Service-Korea

**USAR**  
United States Army Reserve

**USARCS**  
United States Army Claims Service

**USARSO**  
United States Army, South

**USC**  
United States Code

**USPS**  
United States Post Office

**UST**  
United States Treaties and Other International Treaties

**vol**  
volume

**Section II**  
**Terms**

**Affirmative claims**  
The Government's statutory right to recover money, property, or repayment in kind, resulting from property loss, damage, or destruction by any individual, partnership, association, or other legal entity, foreign or domestic, except an instrumentality of the



United States. Also, the Government's statutory right to recover the reasonable medical costs expended for hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances), and the costs of pay provided to an injured soldier during periods of incapacitation incurred under circumstances creating tort liability upon some third person or under circumstances permitting recovery from the injured party's insurer.

#### **Civilian employee**

A person whose activities the Government has the right to direct and control, not only as to the result to be accomplished but also as to the means used. This term includes, but is not limited to, full-time Federal civilian officers and employees. The term "civilian employee" should be distinguished from "independent contractor," for whose actions the Government generally is not liable. The decision as to who is a civilian employee is a Federal question determined under Federal, not local, law.

#### **Claim**

A demand for payment of a specified sum of money (other than the ordinary obligations incurred for services, supplies or equipment) and, unless otherwise specified in this regulation, in writing and signed by the claimant or a properly designated representative.

#### **Claimant**

An individual, partnership, association, corporation, country, state, territory, or other political subdivision of such country. It does not include the U.S. Government or any of its instrumentalities, except as prescribed by statute. Indian tribes are not proper party claimants but individual Indians may be claimants.

#### **Claim approval authority**

Except for claims under chapters 7, 9 and 11 and subject to any limitations found in specific provisions of this regulation, the authority to approve and pay a claim in the amount presented or in a lesser amount upon the execution of a settlement agreement by the claimant. Under chapter 11, the authority of a designated Government agent to adjudicate and pay a claim in a meritorious amount within the monetary limits prescribed in that chapter. A person with approval authority may not disapprove a claim in its entirety or make a final offer subject to any limitations found in specific provisions of this regulation.

#### **Claim file**

A file containing the report of the claims of finer or other report of claims investigation, supporting documentation, and pertinent correspondence.

#### **Claim settlement authority**

The authority to approve a claim, deny a claim in its entirety, or make a final offer

subject to any limitations found in specific provisions of this regulation.

#### **Claims attorney**

A DA or DOD civilian attorney assigned to a judge advocate or legal office who has been designated by the Staff Judge Advocate or other appropriate authority to act as a claim settlement or approval authority.

#### **Claims judge advocate**

An officer of the Judge Advocate General's Corps designated by a command or staff judge advocate to be in immediate charge of claims activities of the command.

#### **Claims officer**

A commissioned officer, warrant officer, or qualified civilian employee detailed by the commander of an installation or unit who is trained or experienced in the investigation of claims.

#### **Combat activities**

Activities resulting directly or indirectly from action by the enemy, or by the U.S. Armed Forces engaged in armed conflict, or in immediate preparation for impending armed conflict.

#### **Disaster**

A sudden and extraordinary calamity occasioned by activities of the Army, other than combat, resulting in extensive civilian property damage or personal injuries and creating a large number of potential claims.

#### **Ex gratia**

"As a matter of grace." In the case of ex gratia claims under the NATO SOFA, Article VIII, paragraph six, a claim considered by the grace of the sovereign or sending State without statutory obligation (under the Foreign Claims Act) to do so.

#### **Federal agency**

A Federal agency includes executive departments and independent establishments of the United States and corporations acting as instrumentalities or agencies of the United States but does not include any contractor working for or with, or supplying goods or services to, the United States.

#### **Final offer**

An offer of payment by a settlement authority in full and final settlement of a claim that, if not accepted, constitutes a final action for purposes of filing suit under chapter 4 or filing an appeal under chapters 3 or 6, provided such offer is made in writing and meets the other requirements of a final action, as set forth in this regulation.

#### **Government vehicle**

A vehicle owned or on loan to any agency of the U.S. Government, or privately owned and operated by a soldier or civilian employee of the Army in the scope of his or her office or

employment with the U.S. Government, including vehicles operated on joint operations of the U.S. Armed Forces.

#### **Medical claims investigator**

A senior legal specialist or qualified civilian assigned to assist a medical claims judge advocate on a full-time basis. A medical claims investigator is authorized to administer oaths under the provisions of Article 1 36(b)(7), Uniform Code of Military Justice, when performing investigative duties.

#### **Medical claims judge advocate**

A judge advocate assigned to an Army Medical Center, under an agreement between The Judge Advocate General and The Surgeon General, to perform the primary duty of investigating and processing medical malpractice claims.

#### **Medical malpractice claim**

A claim arising out of substandard or inadequate medical care.

#### **Military personnel**

Members of the Army on active duty for training or inactive duty training as defined in AR 310-25 and 10 USC 101(c) and (d). This includes members of the Army National Guard of the various states, Puerto Rico, the Virgin Islands, and Guam while performing active duty for training under 32 USC 316, 502, 503, 504, or 505, as well as members of the District of Columbia National Guard while on active duty or active duty for training.

#### **Noncombat activities**

Authorized activities essentially military in nature, having little parallel in civilian pursuits, which historically have been considered as furnishing a proper basis for payment of claims. Examples are practice firing of missiles and weapons, training and field exercises, maneuvers that include the operation of aircraft and vehicles, use and occupancy of real estate, and movement of combat or other vehicles designed especially for military use. Activities excluded are those incident to combat, whether in time of war or not, and use of military personnel and civilian employees in connection with civil disturbances.

#### **Personal property**

Property consisting solely of corporeal personal property, that is, tangible things.

#### **Structured settlement**

A settlement in which compensation is deferred in accordance with a particular plan rather than paid in one lump sum. Structured settlements may range from simple deferred payment plans to complex trusts financed by annuities or other financial instruments.

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<b>MANAGEMENT CONTROL EVALUATION CERTIFICATION STATEMENT</b>  For use of this form, see AR 11-2; the proponent agency is ASA(RM).		1. REGULATION NUMBER
		2. DATE OF REGULATION
3. ASSESSABLE UNIT		
4. FUNCTION		
5. METHOD OF EVALUATION <i>(Check one)</i>		
a. CHECKLIST		b. ALTERNATIVE METHOD <i>(Indicate method)</i>
APPENDIX <i>(Enter appropriate letter)</i>		
6. EVALUATION CONDUCTED BY		
a. NAME <i>(Last, First, MI)</i>		b. DATE OF EVALUATION
7. REMARKS <i>(Continue on reverse or use additional sheets of plain paper)</i>		
8. CERTIFICATION		
I certify that the key management controls in this function have been evaluated in accordance with provisions of AR 11-2, Army Management Control Process. I also certify that corrective action has been initiated to resolve any deficiencies detected. These deficiencies and corrective actions <i>(if any)</i> are described below or in attached documentation. This certification statement and any supporting documentation will be retained on file subject to audit/inspection until superseded by a subsequent management control evaluation.		
a. ASSESSABLE UNIT MANAGER		
(1) Typed Name and Title		b. DATE CERTIFIED
(2) Signature		



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